TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 138.

J. T. SMITHERS, PLAINTIFF IN ERROR,

vs.

T. SMITH, S. A. GREER, R. C. REAGAN, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED OCTOBER 24, 1905.

(19,943.)

(19,943.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 138.

J. T. SMITHERS, PLAINTIFF IN ERROR,

vs.

T. SMITH, S. A. GREER, R. C. REAGAN, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption and style of cause	1	1
Original petition	2	1
Citation to R. C. Reagan *et al.* and return	8	5
Citation to Alexander Anderson and return	10	6
Clerk's certificate as to service on Deven and Anderson	12	7
Acceptance of service by Monteith, Hall, and Pendleton	13	8
Answer of Jas. B. and Ella J. Daniels	14	8
Answer of R. C. Reagan	15	9
Answer of S. A. Greer	21	13
Answer of T. Smith	30	20
First amended original petition	35	23
Motion of each defendant for severance	41	28
Plea and separate answer of C. F. Lee	42	28
Exhibit—Plat	45	30
Answer of Jas. B. and Ella J. Daniels	47	31
Amended plea and separate answer of T. Smith	48	31
Answer to motion to sever	53	35
Judgment	56	37
Order granting extension of time in which to file bill of exceptions	58	38
Assignment of errors	59	39
Petition for writ of error	61	40
Order allowing appeal and fixing amount of bond	62	41

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 24, 1906.

	Original.	Print.
Bill of exceptions	63	41
Agreement of parties as to facts	63	42
Sketch introduced	64	42
Field-notes introduced	64	42
Testimony of T. Smith	65	43
S. A. Greer	66	43
—— Reagan	67	44
—— Mickey	68	45
J. B. Bartley	68	45
W. M. Massie	70	46
Testimony as to value	71	47
Holdings of the court	71	47
Judge's certificate to bill of exceptions	72	47
Sketch A—Plat	73	47
Certificate as to jurisdiction	74	48
Writ of error bond	75	48
Writ of error (original)	77	49
Citation in error (original)	79	51
Acceptance of service by R. C. Reagan *et al.*	81	51
Acceptance of service by A. M. Monteith *et al.*	82	52
Acceptance of service by James B. and Ella Daniels	83	52
Clerk's certificate	84	53

1 *Caption.*

Be it remembered, That at a term of the Circuit Court of the United States, in the Fifth Circuit thereof, and in and for the Northern District of Texas, at Fort Worth, begun and holden at Fort Worth, Texas, on the 13th day of March, A. D. 1905, and which term adjourned on the 8th day of April, A. D. 1905, the Honorable Edward R. Meek, United States District Judge for the Northern District of Texas, the following proceedings were had and the following cause came on for trial, to-wit:

No. 284. Law.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

2 *Original Petition.*

Filed September 9th, 1903.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Fall Term, 1903.

To the Honorable Judge of Said Court:

The Plaintiff, T. J. Smithers, complaining of the Defendants, R. C. Reagan, T. Smith, S. A. Greer, John Deven, A. M. Monteith, W. E. Hall, George C. Pendleton, Alexander Anderson, James B. Daniels and Ella J. Daniels, who are hereinafter called Defendants, respectfully shows and makes known to the Court:

(1.) That the Plaintiff, J. T. Smithers, is a citizen of the County and State of New York and resides in said County and State; that the Defendants, R. C. Reagan, T. Smith, S. A. Greer, John Deven, reside in Floyd County, Texas, and are citizens of the State of Texas; that the Defendants A. M. Monteith, W. E. Hall and George C. Pendleton, reside in Bell County, Texas, and are citizens of the State of Texas; that the Defendants, James B. Daniels and Ella J. Daniels are residents and citizens of the State of Kentucky, and reside in the City of Covington, Ky.; that the Defendant, Alexander Anderson resides in Pike County, State of Illinois, and is a citizen of said State.

(2.) Plaintiff shows to the Court that heretofore, to-wit, on the 15th day of January, 1902, the Plaintiff was lawfully seized and possessed of those certain tracts, or parcels of land situated in Floyd County, Texas, and hereinafter described, holding the same by title in fee simple and entitled to the possession thereof, and was upon said date in lawful and undisturbed possession of said land.

That afterwards, to-wit, upon the day and year last aforesaid,

the Defendants, Reagan, Smith, Greer and Deven unlawfully entered upon said premises and dispossessed Plaintiff thereof, and have ever since said date unlawfully withheld from the Plaintiff the possession thereof to his damage $2,000.00.

That said Defendants who dispossessed Plaintiff set up some sort of paper title to the lands other than those hereinafter described by the Plaintiff, and by means of said claim wrongfully as-
3 serted some title to the land owned by the Plaintiff. That said Lands are bounded and described as follows:

First Tract: Known as Abstract No. 263, Survey No. 27, Block "G," by virtue of Certificate No. 30/371, issued to the T. & N. O. R. R. Co., and described as follows: Beginning 19 miles and 1617 vrs. North and 15 miles West from the S. E. Corner of Sec. 37, Block 28, for the I. & G. N. R. R. Co., on White River (being the section that includes Dewey's Lake), for the Southeast corner of this Survey; Thence North, 1900 vrs.; Thence West 1900 vrs.; thence East 1900 vrs.; to the beginning.

Second Tract: Known as Survey No. 91, Block "G," on the waters of White River, a tributary of the Brazos River, by virtue of Scrip. No. 734, issued to the Tyler Tap R. R. Co.; beginning at the Southeast corner of survey No. 90, Block "G," Scrip. No. 733 of this Company for the Northwest corner of this Survey; thence South 1900 vrs. 8/10 to a stake and mound for the Southwest corner of this Survey; thence East 1900 Vrs. to a stake and mound for the Southeast corner of this Survey; thence North 1900 Vrs. to a stake and mound for the Northeast corner of this Survey; Thence West 1900 Vrs. to the beginning. Said land patented to James B. Daniels, June 14, 1881.

Plaintiff shows to the Court that said two tracts of land are contiguous and adjoining, and that said Survey No. 91 adjoins on the North the said Survey No. 27; that said lands contain 1280 acres and were *e*fnced and have been for many years under fence by the Vendors of Plaintiff, that is to say, there was a fence consisting of cedar posts and barbed wire, joined the entire tract of land, being two miles long North and South and one mile wide East and West, and said fences being on the East and West sides of said tract two miles long, and North and South one mile; and that said lands are further described with reference to physical objects as follows: Beginning at the Southeast corner of said Survey No. 27 and the Northeast corner of No. 91, at a point on the East line of a fence erected by Pendleton, Monteith and Hall, Plaintiff's Vendors being at a point 9962.91 vrs. East, and 551.59
4 North of the Northwest corner of Survey No. 1, Block C, Certificate No. 139, I. & G. N. R. R. Co.; as fixed by an earth mound three feet high; thence North with said fence, which is also called the Pendleton fence, 1900 Vrs. to the Northeast corner of Survey No. 27, as fixed by said fence, being the Northeast corner of said Pendleton fence; thence West with the North line of said fence 1900 Vrs. to corner; thence South on the West line of said Section No. 27 at all points at the place where the fence erected by said Pendleton and others formerly stood, at 1900 Vrs. Southwest

corner of No. 27 at 3800 Vrs. The Southwest corner of said No. 91, and the Southwest corner of said Pendleton fence; thence East with the South line of said Pendleton fence, and the South line of said No. 91, 1900 Vrs. to the Southeast corner of said fence; thence North with said fence 1900 Vrs. to place of beginning.

Plaintiff shows that the Defendant Reagan wrongfully claims a part of said section No. 27 as being a part of a section No. 31, which he claims to own, and the Defendant, Smith wrongfully claims a part of said section No. 27 and No. 91 as being a part of section No. 28; and the Defendant, Greer, wrongfully claims a part of said section No. 91 as a part of section No. 90; and the defendant, Deven, wrongfully claims that he owns some part of the land claimed by Plaintiff herein as a part of section No. 27 and No. 91.

Plaintiff shows, that heretofore, to-wit, on the 19th day of September, 1901, the Defendant, A. M. Monteith, made, executed and delivered to this Plaintiff his deed with covenants of general warranty conveying the said survey No. 27, in consideration of the sum of $1600 paid to him by the Plaintiff; and by the terms of said deed he bound himself to warrant and forever defend the title to said 640 acres of land against every person whomsoever lawfully claiming the same or any part thereof.

That on the 19th day of Sept., 1901, the Defendants, A. M. Monteith, George C. Pendleton and W. E. Hall, made, executed and delivered to Plaintiff their deed with covenants of general warranty whereby they bound themselves, in consideration of the sum of $1600.00 paid to them by the Plaintiff, to warrant and forever defend the title to said survey No. 91, Block "G."

That heretofore, to-wit, on the 31st day of May, 1890, the Defendants, James P. Daniels and Ella J. Daniels, who then resided in the State of Kentucky, made, executed and delivered to the Defendants, A. M. Monteith, Hall and Pendleton, all and singular, said survey No. 91, in consideration of $960 to them paid by said vendees; that they bound themselves to warrant and forever defend said premises; that they were the true and lawful owners thereof, and that the title so conveyed was free, clear and unencumbered, and that they would warrant and forever defend the same against all claim or claims except taxes, after January 1st, 1890. That said purchase was made at the rate of $1.50 per acre, and said Daniels represented that said survey contained 640 acres.

That heretofore, to-wit, on the 6th day of May, 1890, the Defendant, Alexander Anderson, in consideration of the sum of $800. to him paid by A. M. Monteith, made, executed and delivered to said A. M. Monteith, a deed conveying Survey No. 27, Block "G," whereby they bound themselves to warrant and forever defend the title to said land as against any person whomsoever lawfully claiming the same or any part thereof. That said land was sold at $1.25 per acre and by the acre, and said Alexander represented that there *was* 640 acres of said land. That by the terms of each and all of said deeds, the grantors therein became liable and promised Plaintiff, and those claiming under said Deed, that they would warrant and forever defend the title to said land.

That by the acts of the defendants, Reagan, Smith Greer and Deven taking possession of said lands and dispossessing the Plaintiff thereof and claiming the same as parts of other surveys, they have put the rights of Plaintiff in jeopardy, and the defendants who have warranted said lands are required, under the terms of the covenants in their deeds, to now appear and defend this suit, as that there is danger to Plaintiff of losing said land.

6 That the covenants of warranty claimed in the deed by Anderson and that by Daniels and wife, have inured to the Plaintiff, and the Plaintiff is entitled in this suit to rely upon the same.

Plaintiff shows that the said land owned by him is of the value of $5000, and that the value of the sum or amount in controversy in this case is the sum of $5000 besides damages, that the controversy in this case is wholly between the citizens of different States.

That the defendants, Greer, Reagan, Smith and Deven have destroyed and removed a large part of the fencing and other improvements placed upon said land by the Plaintiff and those claiming under him, and have thereby injured said property in the sum of $2000.00, that said land is valuable for farming and grazing purposes, and that its rental value is the sum of $150.00 per annum; that since ejecting Plaintiff from said land, the defendants have been in exclusive possession thereof, using and enjoying the same and denying to Plaintiff any right to such possession.

Wherefore Plaintiff comes and prays that defendants be cited to answer hereto; that said warrantors be vouched in and required to take notice of this proceeding, and that they be concluded by the result of this suit; and that in the event said lands be lost to Plaintiff, either in whole or in part, that Plaintiff recover as against the said Monteith, Pendleton and Hall and against the said Daniels and wife, and Alexander Anderson the sums of money paid to them as consideration for said land, with interest thereon from the date of such conveyances respectively. He further prays for title to and possession of said land as against the said defendants, for his damages, rents and profits, all costs of suit and for general relief. He further prays that he may be awarded a writ of possession of and restored to the peaceable possession of said land; that the boundary lines of the land between Plaintiff and the defendants be established by and with reference to the fences heretofore constructed by Plaintiff and his vendors joining said sections Nos. 27 and 91, and that they have such other and further relief as they may be entitled to under the pleading and evidence in this cause.

7 MATLOCK, MILLER & DYCUS,
Attorneys for Plaintiff.

Endorsed as Follows: No. 284 Law. J. T. Smithers *et al. vs.* R. C. Reagan *et al.* Original Petition. This suit is brought as well to try title as for damages. Filed 9th day of September, 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy.

8 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas, Greeting:

You are hereby commanded to Summon R. C. Reagan, T. Smith, S. A. Greer and John Deven, a resident citizen of the County of Floyd, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 2nd day of November next, to answer the petition in Case No. 284, filed on the 9th day of September 1903, of J. T. Smithers, Plaintiff, against R. C. Reagan, T. Smith, S. A. Greer, John Deven, A. M. Monteith, W. E. Hall, George C. Pendleton, James B. Daniels, and Alexander Anderson, Defendants.

The nature of the Plaintiff's demand is as follows, to-wit: Trespass to try title to those certain tracts or parcels of land situated in Floyd county, Texas, known as Abstract No. 263, Survey No. 27, Block G, Cert. No. 30/371 issued to the T. & N. O. R. R. Co., and Survey No. 91, Block G, Scrip No. 734 issued to the Tyler Tap R. R. Co.; and for damages, costs of suit, &c., as is fully shown by Plaintiff's original petition, a copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said R. C. Reagan, T. Smith, S. A. Greer and John Deven, also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein Fail Not, and due return of this Writ make, on or before the 2nd day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 23rd day of September, in the year of our Lord 1903, and of American Independence the 128th year.

J. H. FINKS,
Clerk of Said Circuit Court.
By J. B. FINKS,
Deputy Clerk.

[SEAL.]

9 [Endorsed:] No. 284. U. S. Circuit Court, Northern District of Texas, at Fort Worth. J. T. Smithers *vs.* R. C. Reagan *et al.* Citation to R. C. Reagan, T. Smith, S. A. Greer, and John Deven, Floyd County. Issued Sept. 23, 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy. Returned and filed Octo. 29, 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy.

Marshal's Return.

Received this Writ on the 29th day of September 189- and I executed the same on the 20 & 21 day of Octo. 1903, by delivering to the within named defendant T. Smith, 10 mi. South of Lockney,

S. A. Greer, 12 mi. South of Lockney, R. C. Reagan at Lockney, in person, a certified copy of the Petition in this case; also a true copy of this Writ.

John Deven not found.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By JNO. B. GIRAND, *Deputy.*

Fee	$6.00
Mileage	....
Actual Expense	67.05
Total	$73.05
Team, 11½d	40.25
Sus., self & team	26.80
	67.05

10 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of American to the Marshal of the Southern District of Illinois, Greeting:

You are hereby commanded to Summon Alexander Anderson, a resident Citizen of the County of Pike, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 2nd day of November next, to answer the Petition in Case No. 284, filed on the 9th day of September, 1903, of J. T. Smithers, Plaintiff, against R. C. Reagan, T. Smith, S. A. Greer, John Deven, A. M. Monteith, W. E. Hall, George C. Pendleton, James B. Daniels, Ella J. Daniels and Alexander Anderson, Defendants.

The nature of the Plaintiff's demand is as follows, to-wit: Trespass to try title to those certain tracts or parcels of land situated in Floyd county, Texas, known as Abstract No. 203, Survey No. 27, Block G, Cert. No. 30/371 issued to the T. & N. O. R. R. Co., and survey No. 91, Block G, Scrip No. 734 issued to the Tyler Tap R. R. Co.; and for damages, costs of suit, etc., as is fully shown by Plaintiff's original petition, a copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Alexander Anderson, also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein Fail Not, and due return of this Writ make, on or before the 2nd day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit

Court, at Fort Worth, Texas, this 23rd day of September, in the year of our Lord 1903, and of American Independence the 128th year.

J. H. FINKS,
Clerk of Said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

[SEAL.]

11 [Endorsed:] No. 284. U. S. Circuit Court, Northern District of Texas, at Fort Worth. J. T. Smithers *vs.* R. C. Reagan *et al.* Citation to Alexander Anderson, Pike County. Issued Sept. 23, 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy. Returned and filed Nov. 6, 1903. J. H. Finks, Clerk By J. B. Finks, Deputy.

Marshal's Return.

Received this Writ on the 20th day of October, 1903, and I return the same not served, the within named Alexander Anderson not found in my district, this 31st day of October A. D. 1903.

C. P. HITCH,
U. S. Marshal, S. D. Illinois,
By E. E. WATTS, *Deputy.*

No Fees.

12 In the Circuit Court of the United States for the Northern District of Texas.

I, J. H. Finks, Clerk of the Circuit Court of the United States for the Northern District of Texas, do hereby certify that the citation shown on pages 8 and 9 of this transcript is the only one that was ever issued in this cause to be served on the defendant John Deven; and that the citation shown on pages 10 and 11 hereof is the only one that was ever issued in this cause to be served on the defendant Alexander Anderson, and that no other process was ever issued herein to said defendants or either of them, or to any officer directing service on said Deven or Anderson, and that no citation or other notice was served upon said defendants, or either of them herein; and that neither said Deven or said Anderson ever entered an appearance or answered in said cause.

In Testimony Whereof, witness my hand officially and the seal of said Circuit Court, at Fort Worth, Texas, this the 30th day of September A. D. 1905.

[The Seal of the U. S. Circuit Court, Northern Dist., Texas., Ft. Worth.]

J. H. FINKS,
Clerk of Said Court,
By J. B. FINKS,
Deputy Clerk.

13 *Acceptance of Service by A. M. Monteith, W. E. Hall, & G. C. Pendleton.*

Filed September 16th, 1903.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

Now comes the Defendants, A. M. Monteith, W. E. Hall, and George C. Pendleton, and waive the issuance and service of process herein, and agree to file their answer in this cause for the next term of this Honorable Court.

A. M. MONTEITH.
W. E. HALL.
GEO. C. PENDLETON.

Endorsed as follows: No. 284, L. J. T. Smithers *vs.* Reagan. Acceptance of Service. Filed 16th day of Sept., 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy.

14 *Answer of J. B. & Ella J. Daniels.*

Filed November 1st, 1903.

In the Circuit Court of the United States for the District of Texas, at Fort Worth. Fall Term, 1903.

No. 284.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

Answer of James B. & Ella J. Daniels.

And the said Defendants, James B. Daniels, and Ella J. Daniels, his wife, by William Hartley Pugh their attorney, come and defend the wrong and injury, when, etc.; and say that they did not bind themselves nor either of them to warrant and forever defend the premises described in Plaintiff's petition against all claim or claims in the manner and form as the said J. T. Smithers hath above thereof complained against them; and of this they respectively put themselves upon the country and ask*s* to be hence dismissed with their costs.

WM. HARTLEY PUGH,
Attorney For JAMES B. AND
ELLA J. DANIELS.

I hereby certify that I am solicitor and of counsel for the defendants in the foregoing cause, and that in my opinion the foregoing plea is well founded in point of law.

WM. HARTLEY PUGH,
Solicitor and of Counsel for Defendants.

UNITED STATES OF AMERICA, *Southern District of Ohio:*

James B. Daniels and Ella J. Daniels each depose and say that they have each read the foregoing plea, that they are defendants named therein, that they know the contents thereof, and that the same is true as they verily believe.

J. B. DANIELS.
ELLA J. DANIELS.

Supscribed and sown to before me, this 30th day of October, A. D. 1903.

JAS. L. ADLER,
U. S. Commissioner, Southern District of Ohio.

Endorsed as follows: No. 284. United States Court, Northern District of Texas, at Fort Worth. J. T. Smithers *versus* R. C. Reagan *et al.* Answer of Jas. & Ella J. Daniels. Filed 1st day of Nov. 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy. Wm. Hartley Pugh, Solicitor and Counsel.

15 *Answer of R. C. Reagan.*

Filed November 23rd, 1903.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 284. At Law.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

To the petition, R. C. Reagan avers:

I.

1. He owns in fee simple and in severalty, and has the title and possession of, the following part of the land described in the petition, namely: Beginning at the Southeast corner of section thirty-one, Block G, said corner being at a point 28 8/10 varas East of the Northeast corner of section number 28, Block G, located by virtue of certificate No. 30/371 originally granted to the T. & N. O. Ry. Co.; said beginning corner being 1900 8/10 varas East of the Northwest corner of said Section twenty-eight, (said Northwest corner being at a stake in earth mound marked by four pits 1900.8 varas East of

stone set in ground marked by two pits about twenty-five varas Northwest of Sand Hill School House, established by H. C. Knight, Surveyor of Crosby Land District for Northwest corner of section Number 29, Block G, same being the Southwest corner of section 30, same block;) Thence North from said Southwest corner of section thirty-one, to the North line of section twenty-seven, as described in petition, a distance of eleven hundred, sixty-three, (1163) varas. Thence West with said North line to the Northwest corner of section twenty-seven, as described in petition, a distance of fourteen hundred, thirty-four, (1434) varas. Thence South with West line of section twenty-seven as described in petition, to its intersection with South line of section thirty-one, same being the North line of section twenty-eight, a distance of eleven Hundred, thirty-four (1134) varas. Thence East to beginning, a distance of fourteen hundred, thirty-four, (1434) varas. The land so described contains two hundred and eighty-eight and one half (288½) acres.

16 2. He has the open, visible, actual and sole possession of above described land; and has same, together with the remainder of section thirty-one, as that section is described below, inclosed by a visible and substantial fence, and so segregated and separated from the remainder of the land described in the petition.

3. For a long time next preceding the filing of the petition, he has had aforesaid title and estate in said land above described, and said possession inclosure and segregation thereof; of all of which the Plaintiff had notice long prior to filing the petition.

4. The South and East boundary lines of the land described in section one above, constitute a part of the South and East lines, respectively, of aforesaid section thirty-one, (31). Reagan has owned and held possession of section thirty-one, in severalty and in fee simple, continuously since long prior to the filing of the petition. Said section is in Floyd County, Texas, and is described by metes and bounds as follows: Beginning at a stake in earth mound marked by four pits 1900.8 varas East of stone set in ground marked by two pits about twenty-five varas Northwest of Sand Hill School House, established by H. C. Knight, surveyor of Crosby Land District, for Northwest corner of survey number twenty-nine, block G, the same being the Southwest corner of section number thirty, Block G, for Southwest corner of this survey. Thence East 1900 varas to a point that constitutes the Southeast corner of the land described in section one above, for Southeast corner of this survey. Thence North passing through the Northeast corner of the land described in section one above, 1900 varas in all; Thence West 1900 varas; Thence South 1900 varas to beginning.

In claiming title and holding possession of the land described in section one above, as aforesaid, Reagan so held and claimed it, openly and notoriously, as a part of section thirty-one and *e*ith reference to, and as marked by the lines of section thirty one as above given, and not as a part of sections 27 and 91 or either of them.

Of the matters set out in this section, Plaintiff had notice long prior to the filing of the petition.

17 5. Save the land described in section one above, Reagan has not now, nor has he ever had or claimed to have, either title or

possession of the land described in the petition. Of all of which Plaintiff had notice prior to filing the petition.

6. The title of Reagan to the land described in section one above, is not derived from or through the remainder of the defendants, or any of them, or from or through any one through whom they or any of them derive title to the land claimed by them, if any, and described in the petition saving the sovereignty of the soil, the State of Texas.

7. The value of the land described in section one above, when the petition was filed, and also on January 1st, 1902, and continuously from that date to the present, was and has been less than eight hundred and sixty-six, (866.00) Dollars.

8. The value of the use of the land described in section one above, from January 1st, 1902, continuously to the present, does not exceed fifteen Dollars, ($15.00) per year.

9. The value of all improvements on the land described in section one above, or the worth to said land of such improvements, placed or owned by Plaintiff and those claiming under him, or any of them, never exceeded One Hundred, ($100.00) Dollars.

10. If the several allegations in the petition that Reagan Smith, Greer and Deven unlawfully entered upon the land therein described dispossessed Plaintiff, and have since held possession, were made as to Reagan with reference to other than the land described in section one above, they are, each of them, untrue, and if so made, Reagan avers, on information and belief, for which belief he has good cause, that each was made with intent to confer upon this Court jurisdiction over him.

11. Plaintiff's allegation that Reagan, Smith, Greer and Deven have destroyed and removed, or either a large part of the fencing and other improvements on the land described in the petition, if made as to Reagan with reference to fencing and improvements, or either, on land other than that described in section one above, is untrue, and if so made, Reagan avers, on information and belief, for which
18 belief he has good grounds that same was made with intent to confer on this Court jurisdiction over him.

If such allegations mean that such fencing and other improvements, or either, on the land described in section one above, was ever of the value, or improved said land to the amount of two thousand Dollars, such allegation is untrue, and Reagan avers, on information and belief, for which belief he has good cause, that same was made to confer on this Court jurisdiction over him.

By reason of the premises, this Court is without jurisdiction over Reagan, and he asks that the suit abate as to him, and that he be dismissed.

L. S. KINDER,
WM. BERNE,
Att'ys for R. C. Reagan.

STATE OF TEXAS, *County of Floyd:*

Before me, the undersigned authority, on this day personally appeared, R. C. Reagan, who first having been by me duly sworn, under oath says that he is a defendant in above suit, and that the foregoing plea, and the allegations made and the facts set out therein, are true in substance and in fact.

R. C. REAGAN.

Sworn to before me, and subscribed in my presence, by said R. C. Reagan, on this the 20th day of November, 1903.

ARTHUR B. DUNCAN,
[SEAL.] *County Judge, Floyd County, Texas.*

II

Not waiving foregoing plea, but relying and insisting thereon, and in event only that same be overruled, Reagan avers:

1. Save as to the land described in section two below, he has not now, nor has he ever had or claimed to have, either title or possession of the land described in the petition, or any part thereof.

2. As to the land below described in this section, he denies, all and singular, the allegations of the petition; and of this he
19 puts himself upon the country. He also denies all and singular, the allegations of the petition of damage for use of the land therein described and from conversion of improvements. And of this, he puts himself upon the country

The land mentioned above in this section is situated in Floyd County, Texas, is a part of that described in the petition, and is described as follows: Beginning at the Southeast corner of section thirty-one, Block G, said corner being at a point 28 8/10 varas East of the Northeast corner of section number twenty-eight, Block G, located by virtue of certificate No. 30/371 originally granted to the T. & N. O. Ry. Co.; said beginning corner being nineteen hundred and eight-tenths, (1900.8) varas east of the Northwest corner of said section 28, (said Northwest corner being at a stake in earth mound marked by four pits nineteen hundred and eight tenths, (1900.8) varas east of a stone set in ground marked by two pits about twenty-five varas Northwest of Sand Hill School House, established by H. C. Knight, surveyor of Crosby Land District for Northwest corner of section Number twenty-nine, Block G, same being the Southwest corner of section thirty, same Block;) Thence North, from said Southeast corner of section thirty-one, to the North line of section twenty-seven, as said section twenty-seven is described in the petition, a distance of eleven Hundred, sixty-three, (1163) varas; Thence West with said North line to the Northwest corner of section twenty-seven, as said section is described in the petition, a distance of Fourteen Hundred, thirty-four, (1434) varas; Thence South with West line of section twenty-seven to its intersection with South line of section thirty-one, same being the North line of section twenty-eight, a distance of eleven hundred, sixty-three, (1163) varas; Thence East to

beginning, a distance of fourteen hundred, thirty-four, (1434) varas.

3. As to the land described in section two just above, he pleads not guilty of the wrongs and trespasses in the petition alleged; and of this, he puts himself upon the country.

Wherefore, he asks to be dismissed.

L. S. KINDER,
WM. BERNE,
Att'ys for R. C. Reagan.

20 Endorsed as follows: No. 284 at law. In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth. J. T. Smithers *vs.* R. C. Reagan *et al.* Answer of R. C. Reagan. Filed the 23rd day of March 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy.

21 *Answer of S. A. Greer.*

Filed November 23rd, 1903.

In the Circuit Court of the United States for the Northern District of Texas, at Forth Worth.

No. 284. At Law.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

I.

To the petition, S. A. Greer avers:

1. He holds possession of, adversely to Plaintiff, and claims as a purchaser immediately, without intervening conveyances, from the sovereign of the soil the State of Texas, as the assignee of R. P. Reeves, the following part of the land described in the petition, namely: Beginning at the Northwest corner of survey No. ninety, Block "G" located by virtue of certificate number 733 originally granted to the T. T. Ry. Co., and situated in Floyd County, Texas, said beginning corner being the Southeast corner of survey Number twenty-eight, Block G, and being eighteen hundred, seventy-two, (1872) varas east of the Northwest corner of said section ninety, (said Northwest corner being at a stone on the North bank of Running Water Draw, and being nineteen hundred, eight-tenths, (1900.8) varas East, and nineteen hundred, eight-tenths, (1900.8) varas South of a stone set in ground marked by two pits about twenty-five varas Northwest of Sand Hill School House, established by H. C. Knight, surveyor of Crosby Land District, for Northwest corner of survey Number twenty-nine, Block G:) Thence South, from said Northeast corner of section ninety, to a point at the intersection of the South line of section ninety-one, as section ninety-one is decribed by physical objects in the Petition, a distance of seven

hundred, thirty seven, eight tenths, (737.8) varas: Thence West to the West line of the land described in the petition, being the Southwest corner of section ninety-one, as section ninety-one is described by physical objects in the petition, a distance of Thirteen Hundred and Sixteen, (1316) varas: Thence North with the West line of section ninety-one, as that section is described as aforesaid, to the intersection of said line with the North line of section
22 ninety, a distance of Seven Hundred, Thirty-seven, eight tenths, (737.8) varas: Thence East to the beginning, a distance of Thirteen hundred and Sixteen (1316) varas; containing One Hundred eight-seven and one half, (187½) acres.

2. He has the open, visible, actual and sole possession of above described land.

3. For a long time next preceding the filing of the petition, he has had aforesaid title and estate in said land above described, and said possession of the land above described: Of all of which the Plaintiff had notice long prior to filing the petition.

4. The North and East boundary lines of the land described in section one above, constitute a part of the North and East lines, respectively, of aforesaid section ninety. Greer has held possession of section ninety, in severalty, claiming as a purchaser directly and immediately from the sovereign of the soil the State of Texas, as its assignee of R. P. Reeves, continuously since long prior to the filing of the petition; said section is in Floyd County, Texas, and is described by metes and bounds as follows: Beginning at a stone on North Bank of Running Water Draw, for the Northwest corner of this survey, the said corner being nineteen hundred, eight tenths (1900.8) varas East, and nineteen hundred eight tenths (1900.8) varas South of a stone set in ground marked by two pits about twenty-five varas Northwest of Sand Hill School House, established by H. C. Knight, surveyor of Crosby Land District, for Northwest corner of survey Number twenty-nine, Block G. Thence East, passing through the Northwest corner of the land described in section one above, to stone, set for the Southeast corner of a six hundred acres survey made for T. Smith out of section twenty-eight, Block G, in all eighteen hundred, seventy-two (1872) varas, for Northeast corner of this survey. Said stone is the Northeast corner of the land described in section one above. Thence South passing through the Southeast corner of the land described in section one above, to a stone on South line of Running Water Draw, in all nineteen hundred, eight tenths (1900.8) varas, for Southeast corner of this survey. Thence West eighteen hundred, seventy-two (1872) varas to
23 a stone set for Southwest corner of this survey. Thence North nineteen hundred, eight-tenths (1900.8) varas to the beginning.

In holding possession of the land described in section one above, as aforesaid, Greer so held and claimed it, openly and notoriously, as a part of section ninety and with reference to and as marked by the lines of section ninety as above given, and not as a part of sections twenty-seven and ninety-one, or either of them.

Of the matters set out in this section, Plaintiff had notice long prior to the filing of the petition.

5. Save the land described in section one above, Greer has not now, nor has he ever had or claimed to have, either title or possession of the land described in the petition. Of all of which, Plaintiff had notice prior to filing the petition.

6. The title of Greer to the land described in section one above, was obtained by him directly and immediately, with the intervening conveyance of R. P. Reeves, from the sovereign of the soil the State of Texas, as the assignee of said R. P. Reeves. Said title is not derived from or through the remainder of the defendants or any of them, or from or through any one through whom they or any of them derive title to the land claimed by them, if any, and described in the petition, save the sovereign of the soil, the State of Texas.

7. The value of the land described in section one above, when the petition was filed, and also on January 1st, 1902, and continuously from that date to the present, was and has been less than six hundred ($600.00) Dollars.

8. The value of the use of the land described in section one above, from January 1st, 1902, continuously to the present, does not exceed Ten Dollars ($10.00) per year.

9. The value of all improvements on the land described in section one above, or the worth to said land of such improvemnets placed or owned by Plaintiff and those claiming under him, or any of them, never exceed- Seventy-Five ($75.00) Dollars.

24 10. If the several allegations in the petition that Reagan, Smith, Greer and Deven unlawfully entered upon the land described therein, dispossessed Plaintiff, and have since held possession, were made as to Greer with reference to other than the land described in section one above, then they are, each of them, untrue, and Greer avers, on information and belief, for which belief he has good cause, that each was made with intent to confer on this Court jurisdiction over him.

11. Plaintiff's allegation that Reagan, Smith, Greer and Deven have destroyed and removed, or either, a large part of the fencing and other improvements on the land described in the petition, if made as to Greer with reference to fencing and improvements, or either, on land other than that described in section one above, is untrue, and if so made, Greer avers, on information and belief, for which belief he has good grounds, that same was made with intent to confer on this Court, jurisdiction over him.

If such allegations mean that such fencing and other improvements or either, on the land described in section one above was ever of the value, or improved said land to the amount of two thousand dollars, such allegation is untrue, and if so made Greer avers, on information and belief, for which belief he has good cause, that same was made to confer on this Court, jurisdiction over him. By reason of the premises, this Court is without jurisdiction over Greer, and he asks that the suit abate as to him, and that he be dismissed.

L. S. KINDER,
WM. BERNE,
Att'ys for S. A. Greer.

STATE OF TEXAS, *County of Floyd:*

Before me, the undersigned authority on this day personally appeared S. A. Greer, who, first having been by me duly sworn under oath says that he is a defendant in above suit, and that the foregoing plea, and the allegations made and facts set out therein, are true in substance and in fact.

S. A. GREER.

Sworn to before me, and subscribed in my presence, by said S. A Greer, on this, the 20th day of November, 1903.

ARTHUR B. DUNCAN,
[SEAL.] *County Judge, Floyd County, Texas.*

25 II.

Not in any wise waiving foregoing plea, but relying and insisting thereon and in event only that same be overruled, Greer avers:

1. Heretofore, on October 28th, 1901, J. T. Smithers, the Plaintiff in the case at Bar, in the District Court of the State of Texas, in and for the County of Floyd therein, in cause Number 355 in said Court, filed his petition in trespass to try title to recover of S. A. Greer, a defendant in the case at Bar, one T. Smith and others, the title and possession of the land described in the petition in the case at Bar.

To the petition, Greer filed a plea of not guilty and a cross action to recover of Smithers the title and possession of section ninety, which is described by metes and bounds below in this section: and Smith filed a plea of not guilty and a cross action to recover of Smithers section twenty-eight, which adjoins section ninety, (90) immediately on the North. Of said action and cross actions, said State Court had jurisdiction.

Said section ninety is in Block G, and was located by virtue of certificate Number 733, originally granted to the T. T. Ry. Co.; and situated in Floyd County, Texas, and more fully described as beginning at a stone on the North bank or Running Water Draw, for the Northwest corner of this survey, said corner being nineteen hundred, eight-tenths, (1900.8) varas east and nineteen hundred, eight-tenths (1900.8) varas South of a stone set in ground marked by two pits about twenty-five varas Northwest of Sand Hill School House, established by H. C. Knight, surveyor of Crosby Land District for Northwest corner of *of* survey No. 29, same Block. Thence East eighteen hundred, seventy-two, (1872) varas to a stone set for the southeast corner of a six hundred acre survey made for T. Smith out of section No. 28, same Block, for Northeast corner of this survey. Thence South nineteen hundred, eight-tenths, (1900.8) varas to a stone on south side of Running Water Draw for Southeast corner of this survey. Thence West eighteen hundred, seventy-two, (1872) varas to a stone set for Southwest corner of this survey. Thence North Nineteen hundred, eight-tenths, (1900.8) varas to beginning.

26 2. On Sept. 2nd, 1902, Smithers dismissed his cause of action, and on same day filed an application and bond to re-

move to this Court aforesaid cross-actions. Thereupon such application was refused by said State Court.

3. Thereafter, and on September 3rd, 1905, Greer recovered judgment against Smithers for the title and possession of section ninety as above described, and Smith a judgment to same effect for section 28: And in the judgment writs of possession were ordered to issue to place Greer and Smith in possession of said sections, respectively.

4. On said September 3rd, after rendition of said judgment, Smithers filed a motion for new trial in said cause No. 355, same was forthwith overruled, and thereupon Smithers duly gave notice of appeal to the Court of Civil Appeals of the State of Texas for the second Supreme Judicial District.

5. On November 3rd, 1902, Smithers filed in this Court a transcript of the record in cause No. 355; and on March 16th, 1903, this Court held that it was without jurisdiction thereof and remanded the cause to the State Court.

6. On August 19th, 1903, Smithers filed in said State Court, in cause 355, his application and bond for writ of error to remove the cause to the aforesaid State Appellate Court for revision of said judgment. The application and bond were in due form, were filed in due time, and within the proper time, Smithers filed in said Appellate Court a transcript of the record in said cause No. 355. The jurisdiction of the said Appellate Court has attached to said cause, and same is now pending therein undetermined.

7. Since the rendition of the judgment in said cause No. 355, and long prior to the institution of the suit at Bar, Greer has had possession of said section ninety, under authority of and in accordance with said judgment.

8. Said section ninety includes the following part of the land described in the petition and no other part thereof, namely: Beginning at the Northeast corner of section number ninety, as above
27 described by metes and bounds, thence South to a point at the intersection of the South line of section ninety-one, as that section is described by physical objects in the petition, a distance of seven hundred, thirty-seven and eight-tenths (737.8) varas. Thence West to the West line of the land described in the petition, being the Southwest corner of section ninety-one as that section is described by physical objects in the petition, a distance of Thirteen Hundred, sixteen, (1316) varas. Thence North with the West line of section ninety-one, as that section is described as aforesaid, to the intersection of said line with the North line of section ninety as section ninety is described in this plea, a distance of seven hundred thirty-seven, eight-tenths, (737.8) varas; Thence East to the beginning, a distance of thirteen hundred, sixteen, (1316) varas.

9. In holding possession of the land described in section eight just above, as aforesaid, Greer so claimed and held it, openly and notoriously, as a part of section ninety and with reference to, and as marked by the lines of section ninety as above given, and not as a part of sections twenty-seven and ninety-one, or either of them.

Of the matters set out in this section, Plaintiff had notice long prior to filing of the petition.

10. Save the land described in section eight just above, Greer has not now, nor has he ever had or claimed to have, either title or possession of the land described in the petition. Of all of which Plaintiff had notice prior to filing the petition.

11. The several allegations in the petition in the suit at Bar that Reagan, Smith, Greer, and Deven unlawfully entered upon the land described therein, dispossessed Plaintiff, and have since held possession, if made as to Greer with reference to other than the land described in section eight above, are each of them, untrue, and if so made, Greer avers, on information and belief, for which belief he has good cause, that each was made with intent to confer on this Court jurisdiction over him.

12. Plaintiff's allegation that Reagan, Smith, Greer and Deven have destroyed and removed, or either, a large part of the fencing and other improvements on the land described in the petition, if made as to Greer with reference to fencing and improvements, or either, on land other than that described in section eight
28 above, is untrue, and if so made, Greer avers on information and belief, for which belief he has good cause, that same was made with intent to confer on this court jurisdiction over him.

If such allegations mean that such fencing and other improvements or either, on the land described in section eight above was ever of the value, or improved said land to the amount, of two thousand dollars, such allegation is untrue, and if so made, Greer avers, on information and belief, for which belief he has good cause, that same was made to confer on this Court jurisdiction over him.

And this, Greer is ready to verify. Wherefore, he prays judgment if this Court ought or will try this cause prior to the determination of said cause in the State Court.

L. S. KINDER,
WM. BERNE,
Att'ys for S. A. Greer.

STATE OF TEXAS, *County of Floyd:*

Before me, the undersigned authority, on this day personally appeared S. A. Greer, who, first having been by me duly sworn, under oath says that he is a defendant in the above suit in the Circuit Court of the United States, and that the foregoing plea, and the allegations made and facts set out therein, are true in substance and in fact.

S. A. GREER.

Sworn to before me, and subscribed in my presence, by said S. A. Greer on this the 20th day of November, 1903.

ARTHUR B. DUNCAN,
[SEAL.] *County Judge, Floyd County, Texas.*

III.

Not waiving foregoing pleas, or either of them, but relying and insisting thereon, and in event only that both be overruled, Greer avers:

1. Save as to the land described in section two below, he has not now, nor has he ever had or claimed to have, either title or possession of the land described in the petition, or any part thereof.

2. As to the land below described in this section, he denies, all and singular, the allegations of the petition; and of this, he puts himself upon the Country. He also denies all and singular, the allegations of the petition of damage for use of the land therein described, and from conversion of improvements. And of this he puts himself upon the Country.

29 The land mentioned above in this section is situated in Floyd County Texas, is a part of that described in the petition, and is described as follows: Beginning at the Northeast corner of survey number ninety, Block G, located by virtue of certificate Number 733 originally granted to the T. T. Ry. Co. and situated in Floyd County, Texas, said beginning corner being the Southeast corner of survey number twenty-eight, Block G, and being eighteen hundred, seventy-two, (1872) varas east of the Northwest corner of said section ninety, (said Northwest corner being a stone on the North bank of Running Water Draw and being nineteen hundred, eight-tenths, (1900.8) varas East, and nineteen hundred, eight-tenths (1900.8) varas south of a stone set in ground marked by two pits about twenty-five varas Northwest of Sand Hill School House, established by H. C. Knight, surveyor of Crosby Land District, for Northwest corner of survey Number twenty-nine, Block (G); thence South, from said Northeast corner of section ninety, to a point at the intersection of the South line of section ninety-one, as section ninety-one is described by physical objects in the petition, a distance of seven hundred, thirty-seven, eight tenths, (737.8) varas. Thence West to the West line of the land described in the petition, being the Southwest corner of section ninety-one, as section ninety-one is described by physical objects in the petition, a distance of thirteen hundred, sixteen, (1316) varas. Thence North, with the West line of section ninety-one, as that section is described as aforesaid, to the intersection of said line with the North line of section ninety, a distance of Seven Hundred, thirty-seven, eight tenths, (737.8) varas. Thence East to the beginning, a distance of thirteen hundred sixteen, (1316) varas.

3. As to the land described in section two just above, he pleads not guilty of the wrongs and trespasses in the petition alleged. And of this he puts himself upon the Country.

Therefore he asks to be dismissed.

L. S. KINDER,
WM. BERNE,
Att'ys for S. A. Greer.

Endorsed as follows: No. 284. At Law. In the Circuit Court of the United States, for the Northern District of Texas, at Fort Worth. J. T. Smithers, *vs.* R. C. Reagan, *Et Al.* Answer of S. A. Greer. Filed 23rd day of Nov., 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy. L. S. Kinder, Wm. Berne Att'ys for Greer.

30 *Answer of T. Smith.*

Filed November 23rd, 1903.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 284. At Law.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

To the Petition, T. Smith avers:

1.

1. Heretofore, on October 28th, 1901, T. J. Smithers, the Plaintiff herein, in the District Court of the State of Texas, in and for the County of Floyd in said State, in cause number 355 in said Court, filed his petition in trespass to try title to recover of T. Smith, a defendant in the case at bar, one S. A. Greer, and others, the title and possession of the land described in the petition in the case at bar.

To the petition, Smith filed a plea of not guilty and a cross action to recover of Smithers, the title and possession of section twenty-eight which is described by metes and bounds below in this section; and Greer filed a plea of not guilty and a cross action to recover of Smithers section ninety, which adjoins section twenty-eight immediately on the South. Of said action and cross actions, said State Court had jurisdiction.

Said section twenty-eight is in Block G, in said Floyd County, was located by virtue of Certificate No. 30/371 originally granted to the T. & N. O. Ry. Co.; and more fully described as beginning at a stake in earth mound marked by four pits nineteen Hundred, eight tenths (1900.8) varas East of stone set in ground marked by two pits about twenty-five varas Northwest of Sand Hill School House, established by H. C. Knight, surveyor of Crosby Land District, for Northwest corner of survey number twenty-nine, same block, same being the Southwest corner of section number thirty, for the Northwest corner of this survey. Thence East eighteen hundred, seventy-two (1872) varas to stake and mound marked by four pits in south line of section number thirty-one (31), same block, for Northeast corner of this survey. Thence South
31 Nineteen Hundred, eight-tenths, (1900.8) varas to a stone in ground for Southeast corner of this survey. Thence West eighteen hundred, seventy-two, (1872) varas to a stone in North Bank of Running Water Draw for Southeast corner of survey number twenty nine, (29), same Block, and Southwest corner of this Survey. Thence North (1900.8) nineteen hundred, eight-tenths varas to the beginning.

2. On Sept. 2nd, 1902, Smithers dismissed his cause of action, and on same day filed an application and bond to remove to this Court aforesaid cross-actions. Thereupon such application was refused by said State Court.

3. Thereafter, and on Sept. 3rd, 1903, Smith recovered judgment against Smithers for the title and possession of section twenty-eight as above described, and Greer a judgment to same effect for section ninety; and in the judgment writs of possession were ordered to issue to place Smith and Greer in possession of said sections, respectively.

4. On said Sept. 3rd, after rendition of said judgment, Smithers filed a motion in said cause number 355 for a new trial, same was forthwith overruled, and thereupon Smithers duly gave notice of appeal to Court of Civil Appeals of the State of Texas for the Second Supreme Judicial District.

5. On November 3rd, 1902, Smithers filed in this Court a transcript of the record in cause No. 355; and on March 16th, 1903, this Court held that it was without jurisdiction thereof and remanded the cause to the State Court.

6. On August 19th, 1903, Smithers filed in said State Court, in cause No. 355, his application and bond for writ of error to remove the cause to aforesaid State Appellate Court for revision of said judgment. The application and bond were in due form, were filed in due time, and within the proper time, Smithers filed in said Appellate Court a transcript of the record in said cause No. 355. The jurisdiction of the said Appellate Court has attached to said cause, and same is now pending therein, undetermined.

7. Since the rendition of the judgment in said cause No. 355, and long prior to the institution of the suit at Bar, Smith has had possession of said section twenty-eight, under authority of
32 and in accordance with said judgment.

8. Said section twenty-eight includes the following part of the land described in the petition and no other part thereof, namely: Beginning at the Northeast corner of section twenty-eight, as it is described above, thence South nineteen hundred, eight-tenths, (1900.8) varas to Southeast corner of that section. Thence West with the South line of said section, to the intersection of said South line with the West line of section ninety-one, (91), as the latter is described by physical objects in the petition, a distance of thirteen hundred and sixteen, (1316) varas. Thence North, with the West line of section ninety-one, (91), as that section is described by physical objects in the petition, to the Northwest corner of said section; and from that corner, continuing North with the West line of section twenty-seven, (27), as the latter is described by physical objects in the petition, to the intersection of said West line with the North line of section twenty-eight, as the latter is above described, a total distance of nineteen hundred eight-tenths, (1900.8) varas. Thence East with the North line of section twenty-eight, to the beginning, a distance of thirteen hundred, sixteen, (1316) varas.

9. In holding possession of the land described in section eight just above, as aforesaid, Smith so claimed and held it, openly and

notoriously, as a part of section twenty-eight, and with reference to, and as marked by the lines of section twenty-eight as above shown, and not as a part of sections twenty-seven and ninety-one, or either of them.

Of the matters set out in this section, Plaintiff had notice long prior to filing the petition.

10. Save the land described in section eight just above, Smith has not now, nor has he ever had or claimed to have, either title or possession of the land described in the petition. Of all of which the Plaintiff had notice prior to filing the petition.

And this, Smith is ready to ver-fy. Wherefore, he prays judgment if this Court ought or will try this cause prior to the determination of said cause in this State Court.

L. S. KINDER,
WM. BERNE,
Att'ys for T. Smith.

33 STATE OF TEXAS, *County of Floyd:*

Before me, the undersigned authority, on this day personally appeared T. Smith, who first having be-n by me duly sworn, under oath says that he is a defendant in the above suit in the Circuit Court of the United States, and that the foregoing plea, and the allegations made and the facts set out therein, are true in substance and in fact.

T. SMITH.

Sworn to before me, and subscribed in my presence, by said T. Smith on this the 20th day of November, 1903.

ARTHUR B. DUNCAN,
County Judge, Floyd County, Texas.

II.

Not waiving the foregoing plea, but relying and insisting thereon, and in event only that it be overruled, Smith avers:

1. Save as to the land described in section two below, he has not now, nor has he ever had or claimed to have, either title or possession of the land described in the petition, or any part thereof.

2. As to the land below described in this section, he denies all and singular, the allegations of the petition. Smith also denies, all and singular, the allegations of the petition of damage for use of the land therein mentioned and from *conversation* of improvements. And of all these matters, Smith puts himself upon the Country.

The land mentioned above in this section is situated in Floyd County, Texas, is a part of that described in the petition, and is described as follows: Beginning at the Northeast corner of section twenty-eight, as that section has been described in the foregoing plea. Thence South Nineteen Hundred, eight-tenths, (1900.8) varas to Southeast corner of that survey. Thence with the South

line of said survey, West to its intersection with the West line of section ninety-one, as the latter section is described by physical objects in the petition. Thence North with the West line of
34 section ninety-one described as aforesaid to the Northwest corner of that section, and North from said corner with the West line of section twenty-seven, as the latter is described by physical objects in the petition, to the intersection of that line with the North line of section twenty-eight. Thence East to place of beginning.

3. As to the land described in section two just above, he pleads not guilty of the wrongs and trespasses in the petition alleged, and of this he puts himself upon the country.

Wherefore, he asks to be dismissed.

L. S. KINDER,
WM. BERNE,
Att'y- for T. Smith.

Endorsed as follows: No. 284. At Law. In the Circuit Court of the United States for Northern District of Texas, at Fort Worth. J. T. Smithers, *vs.* R. C. Reagan, *Et Al.* Answer of T. Smith. Filed 13th day of Nov. 1903. J. H. Finks, Clerk. By J. B. Finks, Deputy. L. S. Kinder, Wm. Berne, Att'ys for Smith.

35 *First Amended Original Petition.*

Filed February 23rd, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Spring Term, 1905.

C. L. No. 284.

J. T. SMITHERS ET AL.
vs.
R. C. REAGAN ET AL.

To the said Honorable Court:

The Plaintiff, J. T. Smithers, complaining of the defendants, R. C. Reagan, T. Smith, Jno. Deven, S. A. Greer, C. F. Lee, A. M. Monteith, W. E. Hall, George C. Pendleton, Alexander Anderson, James B. Daniels and Ella J. Daniels, who are hereinafter called defendants, now comes and files this his First Amended Original Petition, in lieu of said Original Petition filed herein Sept. 9th, 1903, and for cause of complaint respectfully shows and makes known to the Court:

(1.) That the Plaintiff, J. T. Smithers, is a citizen of the county and state of New York, and resides in said county and state. That the defendants, R. C. Reagan, T. Smith, Jno. Deven and S. A. Greer reside in Floyd County, Texas, and are citizens of the State of Texas. That the defendant, C. F. Lee, is a resident and citizen

of Jack County, Texas, residing at Gibtown, in said County, and is a citizen of the State of Texas. That the defendants, A. M. Monteith, W. E. Hall and George C. Pendleton, reside in Bell County, Texas, and are citizens of the State of Texas. That the Defendants, James B. Daniels and Ella J. Daniels are residents and citizens of the State of Kentucky, and reside in the City of Covington in said State. That the defendant, Alexander Anderson, resides in Pike County, State of Illinois, a-d is a citizen of said State.

(2.) Plaintiff shows to the Court that heretofore, to-wit; on the 15th day of January, 1902, the Plaintiff was lawfully seized and possessed of those certain tracts or parcels of land situated in Floyd County, Texas, and hereinafter described, holding the same
36 by title in fee simple and entitled to the possession thereof, and was upon said date in lawful and undisturbed possession of said land.

That afterwards, to-wit, upon the day and year last aforesaid, the defendants, Reagan, Smith, Greer, Lee and Deven, together unlawfully entered upon said premises and dispossessed Plaintiff thereof, and have ever since said date unlawfully withheld from the Plaintiff the possession thereof to his damage $2000.00.

That said defendants who dispossessed Plaintiff, set up some sort of paper title to the lands other than those hereinafter described by the Plaintiff, and by means of said claim wrongfully asserted some title to the land owned by the Plaintiff.

That said lands are bounded and described as follows, viz:

First tract: Known as Abstract No. 263, Sufvey No. 27, Block "G," by virtue of certificate No. 30/371, issued to the T. & N. O. R. R. Co. and described as follows: Beginning 19 miles and 1617 vrs. North, and 15 miles West from the Southeast corner Sec. 37, Block 28, for the I. & G. N. R. R. Co. on White River, (being the section that includes Dewey's Lake,) for the Southeast corner of this survey; Thence North 1900 varas: Thence West 1900 Vrs. Thence South 1900 Vrs; Thence East 1900 Vrs. to the beginning.

Second tract: Known as survey No. 91, Block "G," on the Waters of White River, a tributary of the Brazos River, by virtue of Scrip No. 734 issued to the Tyler Tap R. R. Co, beginning at the Northeast corner of survey No. 90, Block "G," Scrip No. 733, of this Company for the Northwest corner of this Survey; Thence South 1900-8/10 vrs. to a stake and mound for the Southwest corner of this survey; Thence East 1900 Vrs. to a stake and mound for the Southeast corner of this survey; Thence North 1900 vrs. to a stake and mound for the Northeast corner of this survey; Thence West 1900 vrs. to the beginning; Said land patented to James B. Daniels, June 14th, 1881.

Plaintiff shows to the Court, that said two tracts of land are contiguous and adjoining, and that said survey No. 91, adjoins on the North said survey No. 27; that said lands contain 1280
37 acres and were fenced, and have been for many years under fence by vendors of Plaintiff. that is to say, there was a fence consisting of cedar posts and barbed wire, joined the entire tract of land, being two miles long North and South, and one mile

wide East and West, and said fences being on the East and West sides of said tract two miles long and North and South one mile; and that said lands are further described with reference to physical objects as follows: Beginning at the Southeast corner of said survey No. 27, and the Northeast corner of No. 91, at a point on the East line of a fence erected by Pendleton, Monteith, and Hall, Plaintiff's vendors being at a point 9962.91 varas east and 551.59 North of the Northwest corner of survey No. 1, to Block C, Certificate No. 139, I. & G. N. R. R. Co.; as fixed by an earth mound three feet high; thence North with said fence, which is also called the Pendleton fence, 1900 vrs. to the Northeast corner of survey No. 27, as fixed by said fence, being the Northeast corner of said Pendleton fence. Thence West with the North line of said fence 1900 vrs. to corner. Thence South on the West line of said section No. 27, at all points at the place where the fence erected by said Pendleton and others formerly stood, at 1900 vrs. Southwest corner of No. 27 at 3800 vrs. The Southwest corner of said No. 91, and the Southwest corner of said Pendleton fence. Thence East with the South line of said Pendleton fence, and the South line of said No. 91, 1900 vrs. to the Southeast corner of said fence: Thence North with said fence, 1900 Vrs. to place of beginning.

Plaintiff shows that the Defendant, Reagan, wrongfully claims a part of said section No. 27 as being a part of section No. 31, which he claims to own, and the Defendant, Smith, wrongfully claims a part of said section- No. 27 and No. 91 as being a part of section No. 28; and the defendant, Greer, wrongfully claims a part of said section No. 91, as a part of section No. 90; And the defendant-, Deven and Lee wrongfully claims that they own some part of the land claimed by Plaintiff herein as a part, of section- No. 27 and No. 91. That all of said Defendants have jointly taken possession of Plaintiff's said land.

The Plaintiff shows to the Court that the Defendants ought not to be permitted to maintain their defense herein, for the reason
38 that the Plaintiff, claiming under the sovereignty of the soil, the State of Texas, has had peaceable, adverse and exclusive possession of the lands herein described, using and enjoying the same for more than three years prior to the institution of this suit.

Wherefore, he says that he has acquired title to said land under the statute of limitations of three years.

And now comes the Plaintiff and says that he and those under whom he claims, claiming under deeds duly registered, have had and held peaceable, adverse and exclusive possession of the land herein described, by physical objects, holding the same against all persons, using and enjoying said lands and paying all taxes thereon, for more than five years prior to the institution of this suit; and this he is ready to verify.

Plaintiff says that this is an action to fix and determine the boundary of the 1280 acres of land in controversy, which now exceeds in value the sum of $5000.00. That the boundaries of said surveys are confused and uncertain, and that the entire land is the subject

matter of this controversy, as between the Plaintiff and each and all of said Defendants.

Plaintiff shows that heretofore, to-wit, on the 19th day of Sept. 1901, the Defendant, A. M. Monteith made, executed and delivered to this Plaintiff his deed with covenants of general warranty conveying the said survey No. 27, in consideration of the sum of $1600 paid to him by the Plaintiff; and by the terms of said deed he bound himself to warrant and forever defend the title to said 640 acres of land against every person whomsoever lawfully claiming the same or any part thereof.

That on the 19th day of Sept., 1901, the Defendants, A. M. Monteith, George C. Pendleton and W. E. Hall, made, executed and delivered to Plaintiff, their deed with covenants of general warranty, whereby they bound themselves, in consideration of the sum of $1600 paid to them by the Plaintiff, to warrant and forever defend the title to said survey No. 91, Block "G."

That heretofore, to-wit, on the 31st day of May, 1890, the Defendants, James B. Daniels and Ella J. Daniels, who then resided
39 in the State of Kentucky, made, executed and delivered to the defendants, A. M. Monteith, Hall and Pendleton, all and singular, said survey No. 91, in consideration of $960 to them paid by said vendees; that they bound themselves to warrant and forever defend said premises; That they were the true and lawful owners thereof, and that the title so conveyed was free, clear and unencumbered, and that they would warrant and forever defend the same against all claim or claims except taxes after January, 1, 1890. That said purchase was made at the rate of $1.50 per acre, and said Daniels represented that said survey contained 640 acres.

That heretofore to-wit, on the 6th day of May, 1890, the defendant, Alexander Anderson, in consideration of the sum of $800. to him paid by A. M. Monteith, made, executed and delivered to said A. M. Monteith, a deed conveying survey No. 27, Block "G", whereby they bound themselves to warant and forever defend the title to said land as against any person whomsoever lawfully claiming the same or any part thereof. That said land was sold at $1.25 per acre and by the acre, and said Alexander represented that there were 640 acres of said land.

That by the terms of each and all of said deeds, the grantors therein became liable, and promised Plaintiff and those claiming under said deed, that they would warrant and forever defend the title to said land.

That by the acts of the defendants, Reagan, Smith, Greer and Deven in taking possession of said land and dispossessing the Plaintiff thereof, and claiming the same as parts of other surveys, they have put the rights of Plaintiff in jeopardy, and the defendant- who have warranted said lands are required, under the terms of the covenants in their deeds, to now appear and defend this suit, as that there is danger to Plaintiff of losing said land.

That the covenants of warranty claimed in the deed by Anderson and that by Daniels and wife, have inured to the Plaintiff, and the Plaintiff is entitled in this suit to rely upon the same.

Plaintiff shows that the said land owned by him is of the value of $5000, and that the value of the sum or amount in controversy in this case is the sum of $5000 besides damages; That the controversy in this case is wholly between the citizens of different States.

40 That the Defendants, Greer, Reagan, Smith, Lee and Deven have destroyed and removed a large part of the fencing and other improvements placed upon said land by the Plaintiff and those claiming under him, and have thereby injured said property in the sum of $2000.00: That said land is valuable for farming and grazing purposes, and that its rental value is the sum of $150 per annum: That since ejecting Plaintiff from said land, the defendants have been in exclusive possession thereof, using and enjoying the same and denying to Plaintiff any right to such possession.

Wherefore Plaintiff comes and prays that defendants be cited to answer hereto; that said warrantors be vouched in and required to take notice of this proceeding, and that they be concluded by the result of this suit; and that, in the event said lands be lost to Plaintiff, either in whole or in part, that Plaintiff recover as against the said Monteith, Pendleton and Hall and against the said Daniels and wife and Alexander Anderson, the sume of money paid to them as consideration for said land, with interest thereon from the date of such conveyances respectively. He further prays for title to and possession of said land as against the said defendants, for his damages, rents and profits, all costs of suit, and for general relief. He further prays that he may be awarded a writ of possession of and restored to the peaceable possession of said land; that the boundary lines of the lands between Plaintiff and the defendants be established by and with reference to the fences heretofore constructed by Plaintiff and his vendors joining said sections Nos. 27 and 91, and that they have such other and further relief as they may be entitled to under the pleading and evidence in this cause.

MATLOCK, MILLER & DYCUS,
Attorneys for Plaintiff.

Endorsed as follows: No. 284. C. L. J. T. Smithers, *vs.* R. C. Reagan, *et al.* 1st Amended Original Petition. This suit is brought as well to try title as for damages. Filed 23rd day of February, 1905. J. H. Finks, Clerk. By J. B. Finks, Deputy.

41 *Motion of Each Defendant for Severance.*

Filed March 17th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 284. L.

J. T. SMITHERS
v.
R. C. REAGAN.

Now comes the Defendants, C. F. Lee, R. C. Reagan, S. A. Greer, and T. Smith, each for himself, and separately moves this Honorable Court for a severance on the trial hereof, and that each defendant have a several and separate trial as to the matters in controversy severally and separately set up in their answers herein filed; and they pray for all proper orders and relief in the premises.

L. S. KINDER,
SAM J. HUNTER,
Att'ys for Each of the Defendants.

Endorsed as follows: No. 284 L. J. T. Smithers, *vs.* R. C. Reagan *et al.* Motion of each Defendant for Severance. Filed 17th day of March, 1905. J. H. Finks, Clerk. By J. B. Finks, Deputy.

42 *Plea and Separate Answer of C. F. Lee.*

Filed March 23rd, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 284. L.

J. T. SMITHERS
v.
R. C. REAGAN.

Now comes the defendant, C. F. Lee, and for plea to the jurisdiction of this Court over the subject matter of this suit, he says:

That he is the owner and in possession of Section 32, of Block G, in Floyd County, Texas, located by virtue of certificate No. 309, issued to the Tyler Tap Railway Company, containing in all 640 acres; that he holds his title to same by mesne conveyance under the State of Texas, and not as a joint tenant or tenant in common with either or any of the other defendants in this cause, but independently thereof; that of the lands described and set forth by metes and bounds, course and distance, as claimed in Plaintiff's petition, he is the owner and has possession of only 96 acres of the lands claimed by

Plaintiff to be a part of his section No. 27, The parcel of land in dispute and in controversy between the Plaintiff and himself is bounded and described as follows:

Beginning at the Northeast corner of Section 27, as claimed by the Plaintiff and described in his petition; Thence West 466 varas to the original West line of section 32, claimed by this defendant; Thence South with said original line of 32,163 varas to the Southwest corner of section 32, as claimed by defendant. Thence East 466 varas with the South line of said 32, as claimed by this Defendant, to a stake in the East line of section 27, as claimed by the Plaintiff in his petition, the same being in the North line of section 27, as it actually is and was located upon the ground, and 466 varas east of the Northwest corner of said 27, as it was actually located upon the ground; Thence North 1163 varas with the East line of Section 27, as claimed by Plaintiff in his petition, to the place of beginning, containing as aforesaid, 96 acres of land.

That there is not and was not at the date of the institution of this suit by the Plaintiff in this Court, any improvements on said land in controversy other than a string of posts and wire fence less
43 than one mile in length, which string of fence was removed by this defendant from the North line of the land, as claimed by Plaintiff in his petition and rebuilt on the true South line of section 32, as hereinabove described, but all of said fence is still on the land, as claimed by the Plaintiff in his petition, as will be shown by reference to a map or plat of the same filed herewith and referred to as part of this plea. That the whole of said fencing was of value less than $50.00, and was worth less than $50.00 at the date of institution of this suit; that the rental value of said 96 acres so in controversy, was not worth at the date of institution of this suit more than $10.00 per annum, and the whole amount of rent claimed, or which could be lawfully claimed on said land for the whole time, which has been held in adverse possession by the defendant and by John Deven, his grantor, is not and was not of value more than $50.00 and no damages or injury has been done to said land in any manner whatever by the defendant or his grantor, John Devan, prior to the institution of said suit or since; that the matter in controversy in this suit does not and did not exceed $2,000.00 in value, but is far less than said sum. That the claim of Plaintiff as set forth in his petition as to the value of said land, improvements, rent and damages exceeding $2,000.00, has been fraudulently alleged with the intent and purpose to confer jurisdiction upon this Honorable Court, when in truth and in fact, no such jurisdiction existed, because the matter in controversy is of less than $2,000.00 in value.

The defendant disclaims all other lands claimed in Plaintiff's petition, except 96 acres and never did claim any of the other lands claimed in said petition, and this the Plaintiff well knew when he filed this suit against him. He disclaims all other portions of section 27, as claimed by the Plaintiff, except the 96 acres aforesaid, all of which he is ready to verify.

L. S. KINDER,
SAM J. HUNTER,
Att'ys for Defendant C. F. Lee.

C. F. Lee says the statements contained in the foregoing plea, are true in substance and in fact.

C. F. LEE.

Sworn to and subscribed before me, by the Defendant, C. F.
44 Lee, on this the 21st day of March, A. D. 1905.

B. F. ALEASLEY,
[SEAL.] *A Notary Public in and for Jack County, Texas.*

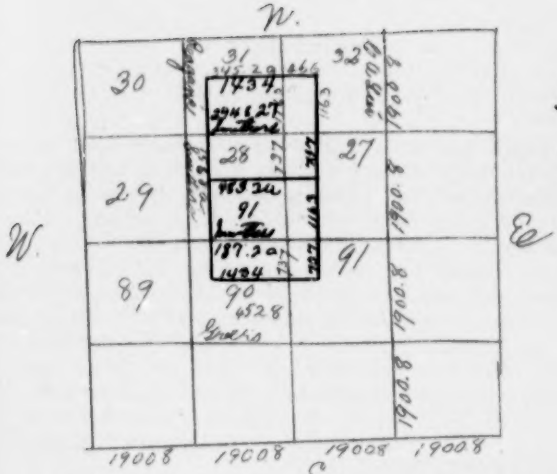
Not waiving his plea to the judisdiction aforesaid, but still insisting and relying thereon, the Defendant, C. F. Lee, disclaims all interest, right, title or possession in and to all the land described in Plaintiff's petition and every portion thereof, except the 96 acres described in his plea to the jurisdiction hereinbefore set out, to which he here refers for description of said 96 acres. That he holds possession and title thereto under the State of Texas, as part of Section 32 in Block G, located for the State School fund by virtue of certificate number 309, issued to the Tyler Tap Railway Company, located in Floyd County, and that said section 32 is bounded and described on the ground as follows:

Beginning at the Northwest corner of section No. 27, Block G, T. & N. O. R'y Co.; as originally located, a stake 1434 varas East from the East line of section 27, as claimed by the Plaintiff and described in his petition. Thence north 1900.8 varas — the Northeast corner of this survey. Thence West 1900.8 varas for its Northwest corner, the Northeast corner of section 31, Block G, Tyler Tap Railway Company survey, as originally located: Thence South 734 varas cross the North line of Section 27, as claimed by the Plaintiff in his petition, continuing South 1900.8 varas with the original West line of Section 32 to its Southwest corner a stake 466 varas West of the East line of Section 27, as claimed by Plaintiff in his petition the same being the Northwest corner of Section 27 and the Northeast corner of Section 28, Block G, T. & N. O. Ry. Co.'s survey as originally located on the ground. Thence East 466 varas the East line of section 27, as claimed by Plaintiff in his petition, a stake in the North line of Section 27, the South line of Section 32, as claimed by Defendant, continuing East 1900.8 varas with the North line of Section 27 to the place of beginning.

That as to the said 96 acres of Section 32, as hereinabove described and claimed by the Plaintiff, he denies all and singular the allegations in Plaintiff's petition contained, and says he is not guilty of the wrongs, injuries, and trespasses alleged against him, and of this he puts himself upon the Country. Wherefore, he prays to be dismissed hence with his costs.

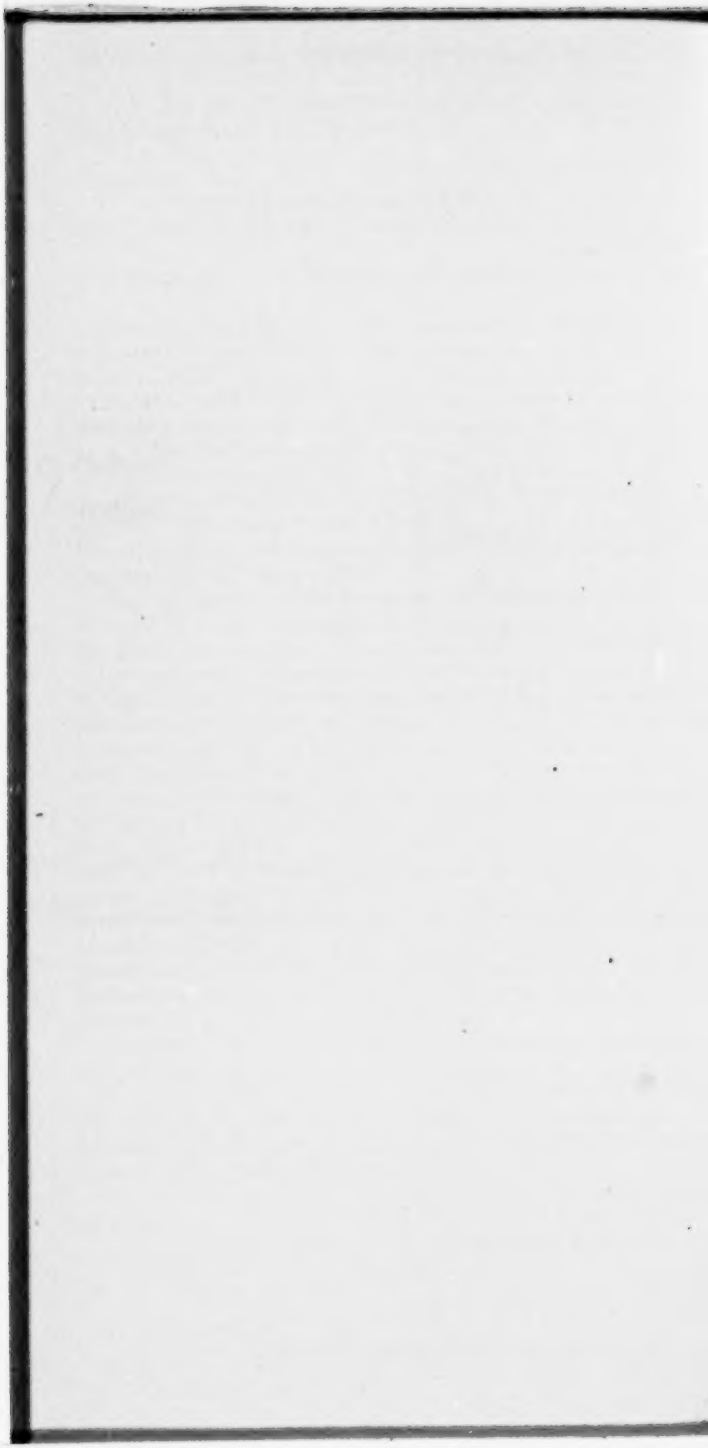
L. S. KINDER,
SAM J. HUNTER,
Att'ys for Defendant C. F. Lee.

(Here follows plat marked page 45.)



Red lines show 27 & 91 as Defendants claim them

Black lines show 27 & 91 as Plaintiff claims them.



46 Endorsed as follows: No. 284 Law. J. T. Smithers, *vs.* R. C. Reagan, *et al.* Plea and Separate Answer of C. T. Lee. Filed 23rd day of March 1905. J. H. Finks, Clerk. By J. B. Finks, Deputy.

47 *Answer of Jas. B. and Ella J. Daniels.*

Filed March 31st, 1905.

No —.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

Now comes the defendants, James B. Daniels and Ella J. Daniels, and answering the Plaintiff's petition herein, they deny, all and singular, the allegations in said amended petition contained, in so far as said allegations charge a sale and conveyance of the land in controversy to the Plaintiff or those under whom he claims.

That as to all of the allegations made by Plaintiff, charging an ownership of the said land by Plaintiff, and the five years statute of limitations, these defendants adopt said allegations and make them their own, and these defendants plead that the Plaintiff has acquired the title both under the three years Statute of Limitations, under which Plaintiff deraigns his title from the sovereignty of the soil, and the five years Statute of Limitations under deed duly registered; and this these defendants are ready to verify.

WM. HARTLEY PUGH,
Attorney for Defendants Above Named.

Endorsed as follows: No. 284. J. T. Smithers, *vs.* R. C. Reagan, *et al.* Answer of James B. and Ella J. Daniels to Amended Pt. of Plaintiffs. Filed 31st day of March, 1905. J. H. Finks, Clerk. By J. B. Finks, Deputy. Wm. Hartley Pugh, Attorney for Defendants.

48 *Amended Plea and Separate Answer of T. Smith.*

Filed March 31st, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 284. L.

J. T. SMITHERS
v.
R. C. REAGAN ET AL.

Now comes the defendant, T. Smith, and by leave of the Court amends his original answer filed herein on the 23rd day of November,

1903, and in lieu of his said answer files the following, to-wit:

Now comes the defendant, T. Smith, and for plea to the jurisdiction of this Court over the subject matter of this suit he says:

That he is the owner and in possession of section 28, of Block G, in Floyd County, Texas, located by virtue of certificate No. 30/371, originally granted to the T. & N. O. Ry. Co.; and more fully described as follows: Beginning at a stake in earth mound marked by four pits 1900.8 varas East of a stone set in the ground marked by two pits about 25 varas Northwest of Sand Hill School House, established by H. C. Knight, surveyor of Crosby Land District for Northwest corner of survey No. 29, same Block, same being the Southwest corner of section No. 30 for the Northwest corner of this survey. Thence East 1872 varas to a stake a mound marked by four pits in the South line of section No. 31, same Block, for Northeast corner of this survey. Thence South 1900.8 varas to a stone in ground for Southeast corner of this survey. Thence West 1872 varas to a stone in the North bank of Running Water Draw for the Southeast corner of No. 29, same Block, and Southwest corner of this survey. Thence North 1900.8 varas to the place of beginning.

That of the land described and set forth by metes and bounds course and distance, as claimed in Plaintiff's petition, he is the owner, and has possession of only 443 acres of the lands so claimed by the Plaintiff to be part and parcel of his section- 27 and 91, holding and claiming title thereto now, and at the date of the institution of this suit, in his own separate right, as purchased from the State of Texas, and not as a tenant in common or a joint tenant with S. A. Greer or any other person. The parcel of land in dispute or in controversy between the plaintiff and this defendant is bounded and described as follows:

49 Beginning at a stone in ground 118 varas west of the South East corner of survey No. 31, made for R. C. Reagan for the Northeast corner of this survey, said stone being 3682 varas East of stone set in the ground by H. C. Knight for the Northwest corner of section 29, said Block G. Thence West 1316 varas to Northwest corner of the tract in controversy a stake in West line of Pendleton fence, being the West line of section 27, as claimed by the Plaintiff, and described and set forth in his petition. Thence South with the west line of Pendleton fence Row, being the West line of sections 27 and 91, as claimed by the Plaintiff, and set forth in his petition, 1900.8 varas to a stake for corner in West line of said Pendleton fence row, same being the Southwest corner of the tract in controversy. Thence East 1316 varas to the Southeast corner of this survey. Thence North 1900.8 varas to the place of beginning.

That on the 9th day of September, 1903, the day Plaintiff's suit herein was filed in this Court, the only improvements upon said 443 acres of land in controversy was a string of posts and wire fence one mile in length, on the West side of said above described 443 acres, and about sixty acres of said land was broken and put in a state of cultivation: That said 443 acres of land at

the date of the institution of this suit was not of value more than $3.00 per acre. That said mile of fence was not of value more than $50.00, and that said sixty acres of broken land was not of value more than $1.00 per acre over and above the price of $3.00 per acre, aforesaid, for the raw land, and the whole of said 443 acres of land, 60 acres thereof being broken and in cultivation and the one mile of fence, together with the rental value of said land, from the year 1901, when he took actual possession thereof, which rental value did not exceed $23.00 per annum, did not exceed in value $2,000.00, but was of value only $1508.00 and no more, and there had been no damage done to said land by defendant in any amount whatever. And said defendant says that the valuation placed thereon by the Plaintiff in his petition at exceeding $2,000.00 and that he and S. A. Greer jointly took possession of said lands claimed by Plaintiff, has been fraudulently claimed and alleged for the intent and purpose of conferring jurisdiction upon this Honorable Court, when in truth and in fact no such jurisdiction existed, because the whole matter in controversy is and was of less value than $2,000.00.

The defendant disclaims all other lands claimed in Plaintiff's petition, except the 443 acres bounded and described as above, and never did claim any of the other lands claimed in Plaintiff's petition, and this the Plaintiff well knew when he filed this suit against him. He disclaims all other portions of sections 27 and 91, as claimed by the Plaintiff, except the 443 acres aforesaid.

L. S. KINDER AND
SAM J. HUNTER,
Attorneys for Defendant T. Smith.

T. Smith says the statements contained in the foregoing plea are true in substance and in fact.

T. SMITH.

Sworn to and subscribed before me by the Defendant T. Smith, on this — day of March, A. D. 1905.

____ ____,
Clerk of the Circuit Court of the United States,
By T. SMITH, *Deputy.*

Not waiving his plea to the jurisdiction aforesaid, but still insisting and relying thereon, the defendant, T. Smith, disclaims all interest, right, title or possession in and to all lands described in Plaintiff's petition and every portion thereof, except the 443 acres described in his plea to the jurisdiction hereinabove set out, to which he here refers for description of said 443 acres; that he holds possession and title thereto under the State of Texas, as part of section 28 in Block G, located for the State School fund by virtue of certificate No. 30/371, T. & N. O. Ry Co. in Floyd County, Texas, said section being bounded and described as hereinabove first set forth in his said plea to the jurisdiction to which reference is here made for the full description of said section 28. That as to the

said 443 acres of section 28, as hereinabove described and referred to and claimed by the Plaintiff, he denies all and singular the allegations in Plaintiff's petition contained, and says he is not guilty of the wrongs, injuries and trespass alleged against him, and of this he puts himself upon the Country.

That for further plea in this behalf the said defendant says
51 that heretofore, to-wit, on October 28th, 1901, the Plaintiff filed his suit of trespass to try title and to establish the boundary line as claimed by him in the District Court of Floyd County, Texas, said suit being No. 355 on the docket of said Court, to recover of this defendant and of S. A. Greer, the title and possession of the 443 acres of land described above; that the defendant filed an answer in said cause and a cross-petition against the plaintiff claiming title and possession of Section 28, as hereinabove first set out, as also did the defendant Greer, claiming title and possession of his Section 90, which adjoins the defendant's Section 28 immediately on the South of which said action and cross-action said State Court had jurisdiction; that plaintiff claimed the land in controversy as hereinabove set out as parts of Sections 27 and 91 while the defendant claimed said land as being part of Section 28, Block G. as aforesaid.

That on Sept. 2, 1902, the plaintiff dismissed his said cause of action and on the 3rd day of September 1903, the said cause coming on for trial this defendant recovered judgment against said plaintiff for the title and possession of Section 28, as first above described, as also did defendant Greer on his cross action for the lands claimed by him as being Section 90 of said Block G. and in said judgment writs of possession were awarded to this defendant and to the said Greer respectively.

That afterwards, the said plaintiff herein being plaintiff in said cause 355, on the identical same cause of action as set forth in his petition in this cause, gave notice of appeal to the Court of Civil Appeals in and for the second supreme judicial district of Texas, and perfected and appeal and on the 3rd day of November 1902, he filed a transcript of the record in said cause 355 in said court of civil appeals, having on the 19th day of August 1903, filed in the District Court of Floyd County, his application and bond for writ of error to remove said cause to said appellate court for revision of the judgment aforesaid, whereby the said court of civil appeals acquired jurisdiction of said cause; that
52 on the — day of ——, 1904, the said court, of civil appeals modified said judgment by striking the field notes therefrom, but in no otherwise and thereupon affirmed the same, and the Supreme Court of Texas upon application made thereto refused the writ of error and also dismissed the same, upon the ground that the action and judgment of the Court of Civil Appeals was final the said cause being a boundary suit; that while there are other parties made to this suit who claimed other and different portions of land from that in controversy herein between this defendant and the plaintiff, yet the very same identical land and the same identical issues are involved in this case that are involved in cause

No. 355 aforesaid. Wherefore this defendant says that the matters and things here now put in controversy in this action *has* been adjudicated and finally set aside and disposed of in said cause No. 355 in the District Court of Floyd County and in the Court of Civil Appeals of the Second Supreme Judicial District of Texas, as aforesaid, and this he is ready to verify.

Wherefore he prays to be dismissed hence with his costs.

L. S. KINDER AND
SAM J. HUNTER,
Attorneys for Defendant T. Smith.

Endorsed as follows: No. 2854 L. J. T. Smithers *v.* R. C. Reagan, *et al.* Amended plea and separate answer of T. Smith. Filed 31st day of Mch. 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

53 *Answer to Motion to Sever.*

Filed March 31st, 1905.

In the Circuit Court of the United States at Fort Worth.

No. 284.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

Now comes the plaintiff and answering the motion of the defendants, Reagan, Smith, Greer and Lee for a severance herein, says that such severance should not be granted but that this cause should be tried as one cause and that the court should refuse said motion for the following reasons to-wit:

(1.) Plaintiff denies that each of the defendants is in possession of a separate and distinct tract of land from that of the other defendants but says to the contrary that said defendants took possession of said land belonging to plaintiff jointly, and that if they have parceled said land out among themselves this does not make their claim of title as to plaintiff separate nor does it require the plaintiff to litigate with each one of them separately.

(2.) That defendants are in possession of other parts of the land than that described in thir respective answers and whether they claim title to the land or not is immaterial for the purposes of this case as they were in possession of such other parts, and together of all of said land, at the date of the institution of this suit and prior thereto, and that said defendants, or some of them, have taken possession of, torn down and removed a large portion of the fences around said land and that plaintiff believed and has in good faith charged that all of them have been connected with such wrongful acts and that all of them contributed to the acts which dispossessed plaintiff of his lands.

(3.) Plaintiff shows that this case involves a question of boundary only, that it does not involve the boundary of each particular tract of land claimed by the several defendants, but the lines and corners of the entire 1280 acres of land in controversy, which ex-
54 ceeds in value $5000, and that there are many theories by which said lands can be located. Plaintiff claims them to be located according to the manner in which he has them fenced, but their true location depends upon the testimony of various witnesses, records and maps, and that any one of a number of theories may be adopted which will locate said land not in accordance with the contention of plaintiff or with the contention of defendant, and that it is absolutely necessary to have all of the parties before the court in order to determine the *w*uestion of boundary because, otherwise, it will require four separate trials involving exactly the same issues and entail four times the work upon the court and the jury and counsel in the case than would be involved in a common trial, and that a final disposition of the question because the jury in one case might decide as to one defendant exactly opposite from the jury in the other case, when the issues are identically the same, and the fixing of anyone of the plaintiff's lines as to one of the defendant's will fix it as to all of the defendants. Whereas, different verdicts and different trials would lead to a lack of uniformity and seriously complicate an equitable disposition of the whole case that each and every defendant is equally interested in the true location of every boundary of plaintiff's and that the settlement as to the lines of any one of the tracts claimed by defendants will necessarily and of right settle the true location as to each and every other defendant.

(4.) Plaintiff further says that as joint trespassers, which he charges the defendants to be, they are not entitled to a severance in this cause, and thats each *is* being responsible for the damages occassioned by his fellow trespassers is a necessary party to a trial involving either of the other defendants because plaintiff is
55 entitled to a joint recovery for damages against all of them.

Wherefore, plaintiff prays that said motion be denied.

MATLOCK, MILLER & DYCUS,
Attorneys for Plaintiff.

Endorsed: No. 284 L. J. T. Smithers *vs.* R. C. Reagan, *et al.* Answer to motion to sever. Filed 31 day of Mch. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

56 *Judgment.*

Entered March 31st, 1905.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, March Term, A. D. 1905.

No. 284.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

MARCH 31ST, 1905.

This day this cause was called for trial; the plaintiff J. T. Smithers appeared by his attorneys and announced ready for trial; the defendants R. C. Reagan, T. Smith, S. A. Greer and C. F. Lee each appeared by their attorneys and announced ready for trial; also J. B. Daniels and Ella J. Daniels appeared by their attorney and announced ready for trial; the defendants A. M. Monteith, W. E. Hall, George C. Pendleton and Alexander Anderson appeared not, but wholly made default.

Whereupon said defendants Reagan, Smith, Greer, and Lee having filed their separate and several pleas to the jurisdiction of this court under oath herein, each in his separate plea disclaims as to all the lands claimed and described in plaintiff's petition, except the certain tract of land set out by metes and bounds in his separate plea, and averred that the matter in dispute between himself and the said plaintiff was of value less than $2000.00, and that the allegations of plaintiff as to joint trespass by defendant and as to damages and values exceeding $2000.00 were fraudulently made for the purpose of conferring jurisdiction on this court presented his several and separate motion to sever on the trial of this cause, praying that each of said defendants be permitted to try the issue joined between himself and the plaintiff as to his separate and distinct tract of land separately and severally: Said motion, after due consideration, was by the court overruled, to which ruling the defendants each excepted.

Thereupon came on to be heard the separate pleas of the defendants to the jurisdiction of the court and a motion by the said defendants to try said pleas separately from the merits of the case, and a jury being waived in writing, it was agreed that the
57 matters of fact as well as those of law, be submitted to the court; and the court after hearing the evidence and argument of counsel and being sufficiently advised, is of opinion that the law and facts are for the defendants on said pleas to the jurisdiction of the court. And the court finds from the evidence that the said pleas of each of the said defendants Reagan, Lee, Smith and Greer is fully proved and sustained and that this court has no jurisdiction over the subject matter in dispute, as pleaded and set forth

in the plaintiff's petition and in the said several pleas of the said defendants.

It is therefore considered, ordered and adjudged by the court that the plaintiff's suit herein be dismissed for want of jurisdiction, as aforesaid, and that the said defendants R. C. Reagan, T. Smith, S. A. Greer, and C. F. Lee, and each of them, do have and recover of and from the said plaintiff J. T. Smithers all their costs in this behalf expended for which let execution issue.

It is further ordered and adjudged that the defendants James B. Daniels and Ella J. Daniels, A. M. Monteith, W. E. Hall, George C. Pendleton, and Alexander Anderson be also dismissed hence from this court in this cause, for want of jurisdiction of this court, and that they have and recover of the said plaintiff all their costs by them laid out and expended, for which they may have their execution. It is further ordered that the officers of court do have and recover of and from the parties hereto respectively the costs by them herein incurred, for which let execution issue.

To all of which the plaintiff, J. T. Smithers, in open court excepts and gives notice of his intention to prosecute a writ of error from the judgment and action of this court in sustaining said pleas of the defendants Reagan, Lee, Smith and Greer, to the jurisdiction.

It is further ordered by the court that the plaintiff may file his bill of exceptions herein at any time prior to the adjournment.

From Minute Book 2, pages 610 and 611.

58 *Order Granting Extension of Time in Which to File Bill of Exceptions.*

Entered April 8th, 1905.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Texas, March Term, A. D. 1905.

No. 284.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

APRIL 8TH, 1905.

On this day came on to be heard the application of the plaintiff for an extension of the time within which he may file his bill of exceptions herein, and the attorneys for the defendants consenting thereto, it is ordered by the court that the said plaintiff have ninety (90) days from this date within which to prepare and file his bill of exceptions herein.

From Minute book 2, page 623.

59 *Assignment of Errors.*

Filed April 8th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

Now comes the plaintiff in the above styled and numbered cause, J. T. Smithers, and submits and files the following assignment of error, which occurred on the trial of the above styled and numbered cause and upon which plaintiff will rely upon his prosecution of the writ of error from the order of this Honorable Court made on the — day of March, 1905, dismissing this cause for want of jurisdiction.

I.

The Circuit Court erred in holding that it did not have jurisdiction of this cause because it was shown that there was the necessary diversity of citizenship between plaintiff and the defendants and that the value of the land in controversy was $3840, exclusive of the rental value and damages sued for and that plaintiff had a right to join all of the defendants in one action inasmuch as the issue in the cause was the true location of the boundary line of surveys Nos. 27 and 91 being the entire 1280 acres in controversy.

II.

That said Circuit Court erred in holding that it did not have jurisdiction of the suit as between the plaintiff and the defendants Smith and Greer for the reason that they were joint trespassers upon a part of the plaintiff's land, which exceeded in value the sum of $2000.00; and there being the necessary diversity of citizenship and the amount in controversy exceeding the sum of $2000.00 the court should have taken jurisdiction of said suit.

III.

60 The Court erred in holding that it could not take into consideration the value of the land in controversy as between the plaintiff and the defendant Smith at the time plaintiff's amended petition was filed, but was confined to the value of said land and the rental value thereof as same existed at the time of the institution of the suit.

IV.

The Court erred in holding that it had not jurisdiction of this cause because the uncontroverted evidence shows that the land in

controversy was of the value of $3 per acre, that the damages claimed was the sum of $2000, that there *was* 1280 acres in controversy between the plaintiff and the defendants and the amount involved far exceeded the jurisdictional value of the court and the defendants had such interest as made them jointly suable by the plaintiff.

In order that the foregoing assignments of error may be and appear of record, the plaintiff presents the same to this court and prays that such disposition be made thereof, as in accordance with law and the statutes of the United States in such case made and provided, all of which is respectfully submitted.

MATLOCK, MILLER & DYCUS,
Attorneys for Plaintiff.

Endorsed as follows: No. 284. J. T. Smithers *vs.* R. C. Smithers *et al.* Assignment of Errors. Filed 8 day of Apl., 1905. J. H. Finks, Clerk, by E. C. VanDusen, Deputy.

61 *Petition for Writ of Error.*

Filed April 8th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

To the Honorable the Circuit Court of the United States for the Northern District of Texas:

J. T. Smithers, the plaintiff in the above entitled cause feeling himself aggrieved by the action of this Honorable Court in dismissing this cause, and holding that it had not jurisdiction of the same by judgment entered on the 31" day of March, 1905, comes now by Matlock, Miller & Dycus, his attorneys, and petitions said court for an order allowing said plaintiff to prosecute a writ of error to the Honorable, the Supreme Court of the United States, under and according to the laws of the United States, and that your Honors make a certificate showing that the said cause was tried and disposed of in the Circuit Court upon the issue of the jurisdiction of the court, invoked by the defendants, and that the only question tried and determined in said cause was the jurisdiction of said Circuit Court; and petitioner further prays that an order be granted fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security, a transcript of all of the proceedings by certificate to the Supreme Court of the United States.

And your petitioners will ever pray.

MATLOCK, MILLER & DYCUS,
Attorneys for Defendants.

The foregoing has the following endorsement, to-wit:
No. 284. J. T. Smithers *vs.* R. C. Reagan, *et al.* Petition for allowance of writ of error. Filed 8 day of Apl., 1905. J. H. Finks, Clerk, by E. C. VanDusen, Deputy.

62 *Order Allowing Appeal and Fixing Amount of Bond.*

Entered April 8th, 1905.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 284.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

APRIL 8TH, 1905.

Upon consideration of the foregoing petition for writ of error and for fixing the bond required of plaintiff, it is ordered that a writ of error be and is hereby allowed to the Supreme Court of the United States and that plaintiff be required to give bond in the sum of $500.00.

This the 8th day of April, 1905.

EDWARD R. MEEK,
United States District Judge.

From Minute book 2, page 630.

63 *Bill of Exceptions.*

Filed July 7th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. ——.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

Be it remembered that on the 31 day of March, 1905, the above styled and numbered cause came on for trial on the several pleas of the defendants, T. Smith, R. C. Reagan, S. A. Greer and C. F. Lee, urging that the Circuit Court of the U. S. had no jurisdiction over the subject matter of the suit; and then the parties plaintiff and defendants having waived a jury, submitted the matters of fact, as well as of law, to the Honorable Edward R. Meek, District Judge presiding as Circuit Judge, upon the trial of said cause. And thereupon the following proceedings were had:

I.

The defendants offered in evidence the agreement of the parties made and entered into, to the following effect:

(1) That the plaintiff J. T. Smithers is the owner of survey No. 27 by virtue of Certificate No. 30/371 the T. & N. O. Ry. Co., and of survey No. 91 in the name of Tyler Tap Ry. Co., Certificate No. 734 patented to James B. Daniels, assignee. That plaintiff was the legal and equitable owner of such land by title in fee simple, each tract patented to contain 640 acres.

(2) That the defendant R. C. Reagan is the legal and equitable owner, by title in fee simple, of survey No. 31.

(3) That the defendant Lee is the owner, by title in fee simple, of survey No. 32, a section of State School Land not yet patented and that said Lee had as full and complete a title as could be vested in him without the payment of the purchase money and the issuance of a patent.

(4.) That the defendant Smith is the owner, by title in fee
64 simple, of survey No. 28, Certificate No. 30/371, which survey was school land not yet patented nor the purchase money fully paid. Smith owned the same as fully and completely as he could own same without the issuance of a patent.

(5) That the defendant Greer is the owner by title in fee simple, of all of survey No. 90, being the alternate section No. 91. The same had not been patented or paid for but Greer owned the same as fully as he could own it without the payment of the purchase money and the issuance of a patent.

(6) That each of the above defendants above named owned the respective tracts of land referred to as being owned by him, under purchase from the State of Texas, and that the evidence of title in the defendants is a certificate of purchase issued to him in due form of law by the Commissioner of the General Land Office. The purchasers were made long after the issuance of the patents to surveys Nos. 27 and 91.

(7) The plaintiff and R. C. Reagan each have a complete chain of title from the State of Texas down to themselves for the land patented to them and the ownership existed at the date of the institution of this suit.

(8) It was agreed that the purpose of this suit was to fix and establish the boundaries of surveys Nos. 27 and 91.

II.

The relative positions of the lands claimed by the plaintiff and defendants is shown on the following sketch.

III.

The defendants introduced in evidence certified copies of the field notes made by the County Surveyor of Floyd County, in which all of the lands are situated which sketch shows that survey No. 28 as claimed by Smith, contains only 600 acres, and the field notes of sur-

veys Nos. 90, 32, and 31, show that it was surveyed by the said surveyor at the times defendants purchased as contended for by said defendants.

IV.

65 The defendant T. SMITH testified that he settled upon what he contends to be section No. 28, in the year 1899. He found most of the land which he claimed as section No. 28 to have been fenced by Pendleton, Monteith and Hall, the vendors of Smithers, and the fence stood at the places indicated by the red line shown on Sketch (*a*). The house of the defendant Smith was built just west of that fence and he fenced in a small part of his land lying west of said fence. He gave notice to the representatives of Pendleton, Monteith and Hall to move the fence as it was too far west. They refused to do it, and thereupon he (Smith) moved the fence considerably further east so as to enlarge his enclosure. He then turned his cattle into the plaintiff's enclosure and allowed them to remain therein. For a while he did not have enough cattle to pasture his own land. He afterwards received others and he and Greer both turned into the common enclosure formerly occupied by the plaintiff and plaintiff's vendors as a pasture for their cattle. They used the pasture together, that is Smith and Greer. At first there were no cross fences, but afterwards in March 1903 Smith built the fence about where he claimed the south boundary line of section 28 to be, as shown by Sketch (*a*) stopping at his southeast corner as therein shown. Greer then completed the fence from that point east joining it to plaintiff's east fence. Smith testified that he had never claimed that part of the land between the east line of survey No. 28 and plaintiff's east fence being a tract of about 160 acres but *he* it remained in the enclosure and he had the same use of it as he had of his own land. He had never claimed that part of the land and had so informed Bartley, plaintiff's agent. There is now in the enclosure about 720 acres of land, which was part of the land formerly in plaintiff's enclosure 80 acres belonging to Greer, which was really a part of the land em-

braced in the former enclosure of the plaintiff. This 80 acres,
66 by a mistake in putting the fence in between Smith and Greer, included in Smith's enclosure that much of Greer's land. Smith promised to pay Greer rent on this land, and did pay it. Smith only claimed 600 acres of the land in his enclosure. He did not claim the 80 acres which he was paying Greer rent on, nor the 160 acres which he admitted belonged to plaintiff and never did. Smith claimed title to only 443 acres of land inside of the Pendleton pasture.

V.

S. A. GREER testified that he had never been in joint possession with the other defendants; that he had never claimed any of the land except the land shown on Sketch (*a*) to be a part of section No. 90. When Smith put his fence across, presumably on the south part of section 90, he took in 80 acres of land belonging to section 90. This 80 acres was part of what had been inside of the Pendleton fence, belonging to plaintiff. Plaintiff's fence was around the pasture in use

by the plaintiff before Greer bought and he at first had turned the cattle into the pasture used by plaintiff. As contended by defendants, plaintiff's fence was not on the lines of sec's 27 & 91. He had decided to turn cattle into the enclosure, because if his Greer's theory of the lines was right the land was his and not plaintiff's and he had never claimed any of the land north of the north line of section 90 nor east of that line as shown by sketch (a). He had the same use of that part of plaintiff's land between the east line of section 90 and the east line of plaintiff's fence that he had of the balance of the land, but he had never claimed that part, and he had so informed plaintiff's agent. Smith and Greer had never jointly trespassed in taking possession of plaintiff's land. Both of them had turned cattle into the pasture, but they did not claim their cattle jointly nor did they claim the land jointly. S. A. Greer had run a fence from the southeast corner of section 28 over to the east line of plaintiff's pasture fence and joining to said fence, and thereby it gave to Smith all of
67 the land north of that point belonging to plaintiff, and to Greer the use of all of that land south of that point. There were only about 187 acres belonging to plaintiff inside of Greer's enclosure. Greer testified that he had never claimed jointly with Reagan, Lee or Smith, but all of them together claimed all of the land formerly in plaintiff's possession and inside of the pasture except the strip shown between the east line of sections 28, and 90 as shown on the sketch (a) and the east line of plaintiff's fence as shown in red on said sketch. Lee only claimed 96 acres; Reagan claimed 288 acres. This land was worth about $3.25 per acre. None of the parties claimed the land jointly but each claimed separate tracts. Smith had about 60 acres in cultivation on his tract which was formerly inside of the Pendleton fence, and its rental value was about $1.50 per acre per annum. It had been in Smith's possession for three years. The fence on the west line of plaintiff's pasture which had been placed there by Pendleton, Monteith and Hall, had been moved. Smith had moved a part of it.

VI.

REAGAN testified substantially as did Greer, except that he did not come to or take possession of the land until about 1902, and did not know who had moved the fence. At the time he bought the land, he did not know that there was any conflict between the plaintiff and himself. He found out there was a conflict, however, and he bought the land and then he moved the fence which was formerly where plaintiff claimed the North line of section No. 91, to be, down to where he claimed the south line of section No. 31 to be, and he put this fence on the south line of section No. 31 and thereby included inside of his enclosure a part of the land that was formerly inside of plaintiff's pasture and claimed by plaintiff as a part of section 27. Lee, who claimed a part of the land inside of this pasture as a part of section No. 32 did not disturb any of the fence. The fence
68 was placed on Lee's land by this defendant. Defendant Reagan testified that the value of the land was $3 per acre without the improvement. The fence was worth about $50 per mile. He

testified as to the rental value of Smith's land substantially as did the others. That part of the land in Smith's enclosure which was not in cultivation was used by Smith as grazing land and as a pasture for his cattle and horses. It was worth from 3c. to 5c. per acre per annum. Smith had possession for about three years.

VII.

Mr. MICKEY, local postmaster in Floyd County, testified that the value of the land claimed by Smith out of the pasture of plaintiff was about $3.25 per acre, and that all of the land inside of Smith's pasture, which was the land claimed by plaintiff and formerly in plaintiff's possession, was of about the value of $3.25 per acre. In addition to this, there was about a mile of fence on the tract of the value of $60. Smith had been in possession of the land for three years, and the value of the use and the occupation of the land had been $1.50 per acre per annum, during that time. The value of the grazing land in Smith's possession, of which there was about 600 acres out of the tract claimed by plaintiff was from 3c. to 5c. per acre per annum. Witness was interested in seeing that the lands were located as contended for by defendants, as he had a preemption which depended for its existence upon the defendants having their land correctly located. If their lands were not correctly located, they would go further west and it would cover witness' tract, and of course witness was interested in seeing that the defendants prevailed.

VIII.

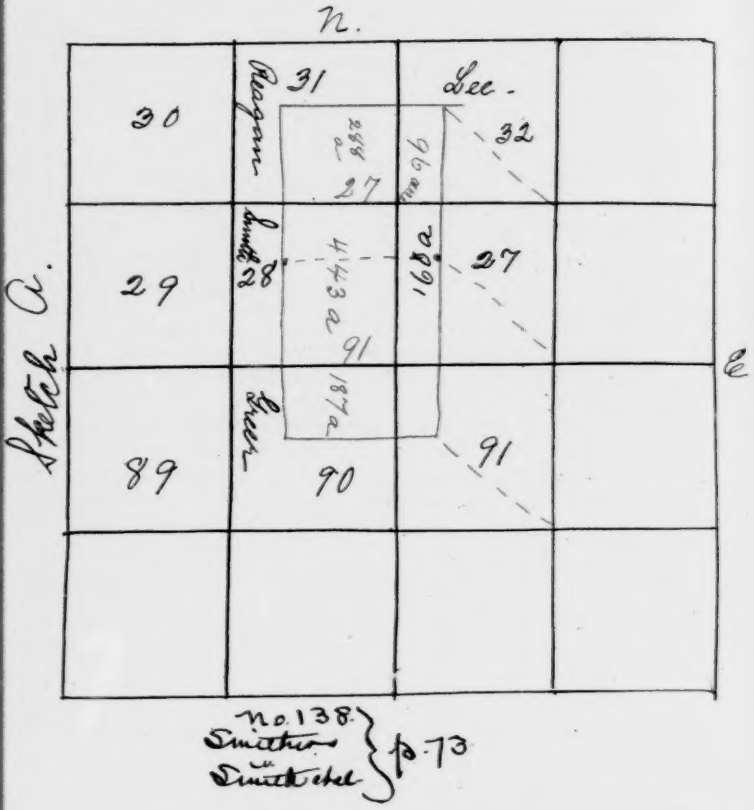
J. B. BARTLEY, witness for plaintiff, testified that he was the agent for Pendleton, Monteith and Hall, who fenced the 1280 acres of land in controversy in 1892. A substantial barbed wire fence with posts every thirty or forty feet apart was placed entirely around the 1280 acres, there being in all six miles of fencing, two miles on the
69 east, two on the west and a mile on the north and a mile on the south, and there were no cross fences. The land was fenced as a solid body and the fence was a substantial one. Witness leased this pasture from Massie, the agent of Pendleton, Montieth and Hall. Sometime after 1892 he used it a part of three years. Witness recognized Pendleton, Montieth and Hall as the owners. He used it for grazing cattle and horses. Witness looked after keeping up the fences, and kept them up while he had possession of the land. He kept them up by having a person to ride the line. Mr. Massie also used the land. Up to the time that Smith settled on what he claimed to be section 28, he never had much trouble in keeping the fences up. Up to that time he had at all times recognized Pendleton, Montieth and Hall as the owners. They afterwards sold to plaintiff. When Smith first settled on the land west of the Pendleton pasture (the land being called the Pendleton pasture and the Pendleton, Montieth and Hall pasture and plaintiff's pasture interchangeably), he tied his fence to the Pendleton fence and afterwards moved the Pendleton fence or a part of it some distance east, thereby increasing his enclosure and taking the land out of plaintiff's pasture. While

he Bartley was in possession, he claimed this pasture as being sections Nos. 27 and 91 and as belonging to the plaintiff or his vendors. He was on this land in the fall of 1904. The south fence had not been moved. All of the west string had been moved away from where it stood, as shown by the west red line on sketch (*a*) a portion of it was torn down and the wire was still on the ground. Smith and Greer had the use in common of all of the Pendleton pasture except that part which had been fenced by Reagan until Greer ran a fence through on what he claimed to be his north line. He tied his fence to the Pendleton fence, and then gave him the use of all of the land inside of the Pendleton pasture south of his fence and extending to the east line of the Pendleton pasture. Smith has now pos-
70 session of 640 acres of the Pendleton pasture extending from the east Pendleton fence to where the west Pendleton fence formerly stood and to Reagan's North line. This was the case at the time this suit was brought. Smith never told witness how much of the Pendleton Pasture he claimed. Greer told him how much he claimed. Greer told witness about how much of the land he claimed, that is showed him where his lines were but did not claim east of those lines although he had possession of the land east of that point. Witness was a tenant under Montieth, Pendleton and Hall. He did not ask any of the defendants why they had taken possession of the land except Greer. For sometime Smith and Greer had common use of the Pendleton Pasture before the division fence. Witness never saw any of the parties tearing down a fence. There were no improvements on the land claimed by the plaintiff as section- 27 and 91 except the six miles of fence. Witness was acquainted with the market value of the land in Floyd County. It was worth at least $3 per acre when the suit was brought. The land sued for was worth $4 per acre in February 1905. That was its market value. Grazing lands were worth 5¢ per acre. The rental value of the land of which Smith had taken possession formerly out of the Pendleton pasture was from 3½¢ to 5¢ per acre per annum. He had held it ever since 1901.

IX.

W. M. Massie testified substantially as did the witness Bartley. Massie was the agent for the plaintiff and before that time was the agent for Pendleton, Montieth and Hall, who conveyed to plaintiff the land sued for on the 19th day of Sept. 1901. At the time of the institution of this suit witness had informed plaintiff's attorney about how much of the land was claimed by each of the defendants and approximately where the lines run as claimed by defendant. He did not know whether the defendant's fences were on the line where they had run across fences through the pasture or not. But
71 he had told plaintiff's attorneys approximately how much they claimed. The land at the time of the institution of this suit was worth $3 per acre, and in February 1905, when the amended petition was filed, was worth $4 per acre. The fence was worth about $60 per mile, the lands in cultivation had a rental value of $1.50 per acre and Smith had had the use of 60 acres of cultivated land for about three years. The land which Smith had in possession belong-

(The red lines show the land as described and claimed by the plaintiff in his petition; the black lines show the land as claimed and described by the defendants, each separately and severally, as above stated.)



This plat was prepared by defendants counsel to illustrate the conflicts between the locations of the lands as claimed by plaintiffs and ascliamed by the defendants.

Endorsed as follows:No. 284. J.T.Smithers vs R.C.Reagan et al, Bill of Exceptions. Filed 7th day of July 1905, J.H.Finks, Clerk By J.B.Finks, Deputy.

ing to plaintiff, as contended by witness was 640 acres, and its value was $3 per acre. Smith, however, had informed witness that he did not claim the 160 acres of this land lying between the point indicated on sketch (*a*) as the east line of section 28, at the point in red shown to be the east line of sections 27 & 91 as claimed by plaintiff. These lands had been in possession of the defendants after ousting plaintiff for some three or four years last past.

In addition to the foregoing there were several witnesses who testified that the land in controversy was only worth $2.50 to 3.00 per acre at the time this suit was instituted in September 1903.

—.

Upon the trial of this cause the court held that the amount in controversy as between plaintiff and the defendant Smith was the value of such lands as were claimed by Smith in the pasture containing sections Nos. 27 and 91 and not the value of all of the land embraced in enclosure as shown by the red lines. That in determining the amount in controversy, the court would not include the 160 acres east of the east line of section 28 as claimed by Smith, although Smith was in possession of same.

XI.

The Court further held that he would not consider the value of the land at the time plaintiff's first amended petition was filed or at the time the suit was tried on defendant's pleas to the jurisdiction with the rental values of the lands up to that time as claimed by Smith,
but would confine himself to the value of the lands and the
72 rental values thereof claimed by Smith as said values existed
at the time of the institution of this suit.

The foregoing constitutes the testimony and statement of all the evidence introduced and offered upon the trial of this cause.

To which rulings of the court counsel for the plaintiff then and there duly excepted, and here now tenders this his bill of exceptions to the court, and the same is hereby allowed and approved and directed to be filed as a part of the record in this case.

EDWARD R. MEEK, *Judge.*

In Chambers at Ft. Worth, July 7th, 1905.

(Here follows plat marked page 73.)

74 *Certificate as to Jurisdiction.*

Entered April 8th, 1905.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 284.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

APRIL 8TH, 1905.

The writ of error in this case is granted solely upon the question of jurisdiction, which, as set forth in the petition for writ of error, is hereby certified by the Circuit Court of the United States for the Northern District of Texas, the undersigned Judge presiding as Circuit Judge, to the Supreme Court of the United States and in order that the Supreme Court may properly determine the question of jurisdiction (no other question having been tried in the Circuit Court and the said cause having been finally disposed of under the defendants' pleas to the jurisdiction of the Circuit Court), it is ordered that a transcript of the record, containing the bills of exceptions, as in other cases, shall be duly authenticated and be sent to the Supreme Court of the United States with this certificate.

Dated this the 8th day of April 1905.

EDWARD R. MEEK,
U. S. District Judge.

From Minute Book 2, page 630.

75 *Writ of Error Bond.*

Filed September 11th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 284.

J. T. SMITHERS
vs.
R. C. REAGAN ET AL.

Know all men by these presents: That we, J. T. Smithers as principal, and J. Z. Miller, Jr., and S. M. Ray, as sureties, are held and firmly bound unto R. C. Reagan, T. Smith, S. A. Greer, John Deven, C. F. Lee, A. M. Monteith, W. E. Hall, Geo. C. Monteith, James B. Daniels and Ella Daniels and Alexander Anderson, in the full sum of Five Hundred Dollars, to be paid to them, their heirs,

executors, or administrators, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and ours and each of our successors, representatives and assigns firmly by these presents.

Sealed with our seal- and dated this the 20th day of July 1905.

Whereas, the above named plaintiff has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the Circuit Court of the United States for the Northern District of Texas, which judgment was rendered on March 31st 1905, dismissing said cause for want of jurisdiction.

Now, Therefore, the condition of this obligation is such that if the above named J. T. Smithers shall prosecute his writ of error to effect and shall answer all costs and damages that may be assessed against him, if he fails to make good his plea, then the above obligation to be void, otherwise, to remain in full force and virtue.

Given under our hands the date aforesaid.

J. T. SMITHERS,
Principal.
J. Z. MILLER, JR.,
S. M. MAY, *Sureties.*

Approved:
EDWARD R. MEEK, *Judge.*

76 THE STATE OF TEXAS, *County of Bell:*

I, Jno. G. McKay, Clerk of the District Court in and for said County, do hereby certify that J. Z. Miller, Jr., and S. M. Ray, whose genuine signature- appear signed to the annexed bond are, in my opinion, good and ample security for the amount therein specified; that each of them have property in said County subject to execution of a larger amount, and that if said bond was offered to me for approval the same would be accepted and approved.

Witness my hand and seal, at Belton, this 20th day of July 1905.

JNO. G. McKAY,
[SEAL.] *Clerk Dist. Court, Bell County.*

The foregoing has the following endorsement, to-wit:—
No. 284 L. J. T. Smithers *vs.* R. C. Reagan *et al.* Writ of error bond. Filed 11th day of Sept. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

77 THE UNITED STATES OF AMERICA:

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Northern District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a certain cause in the said Circuit Court before you or some of you, between J. T. Smithers, Plaintiff in Error, and T. Smith, S. A. Greer, R. C. Reagan, C. F. Lee, James B. Daniels, Ella Daniels, George C. Pendleton, A. M. Monteith, and W. E. Hall,

defendants in error, in Cause No. 284, on the common law docket of the Circuit Court of the United States for the Northern District of Texas at Fort Worth, a manifest error hath happened, to the great damage of said J. T. Smithers, plaintiff in error, as by his complaint appears.

We being willing that error, if any hath been committed, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ so that you have the same at the City of Washington on the second Monday in October, 1905, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States the 11th day of September, in the year of our Lord One Thousand Nine Hundred and Five.

[The Seal of the U. S. Circuit Court, Northern Dist., Texas, Ft. Worth.]

J. H. FINKS,
Clerk of the U. S. Circuit Court
for the Northern District of Texas,
By J. B. FINKS, *Deputy.*

78 *The Answer of the Judges of the Circuit Court of the United States for the Northern District of Texas.*

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court to the Supreme Court of the United States within mentioned, at the date and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

Done by the Court.

[The Seal of the U. S. Circuit Court, Northern Dist., Texas, Ft. Worth.]

J. H. FINKS,
Clerk of the said Circuit Court,
By J. B. FINKS, *Dep.*

78½ [Endorsed:] No. 284. C. L. J. T. Smithers *vs.* R. C. Reagan *et al.* Writ of Error. Filed 11th day of Sept. 1905. J. H. Finks, Clerk. By J. B. Finks, Deputy.

79 The President of the United States of America to T. Smith, S. A. Greer, R. C. Reagan, C. F. Lee, J. B. Daniels, and Ella Daniels, A. M. Monteith, W. E. Hall, and Geo. C. Pendleton, Greeting:—

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at Washington on the 9th day of October, 1905, pursuant to a writ of error allowed by the Circuit Court of the United States for the Northern District of Texas, in a cause tried and determined at the March, 1905 term of the said Circuit Court, being Cause No. 284 C. L., wherein J. T. Smithers is plaintiff and yourselves are defendants, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States this the 11th day of September, in the year of our Lord One Thousand Nine Hundred and Five.

EDWARD R. MEEK,
United States District Judge, Presiding as Circuit Judge for the Northern District of Texas.

80 [Endorsed:] 284 L. J. T. Smithers *vs.* R. C. Reagan *et al.* Citation in Error. Filed 11th day of Sept. 1905. J. H. Finks, Clerk. By J. B. Finks, Deputy.

81 *Acceptance of Service by R. C. Reagan, T. Smith, S. A. Greer, and C. F. Lee.*

Filed September 11th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

J. T. SMITHERS, Plaintiff in Error,
vs.
R. C. REAGAN ET AL., Defendants in Error.

We the undersigned, R. C. Reagan, T. Smith, C. F. Lee and S. A. Greer, acting by and through our duly authorized attorney, Sam J. Hunter, do hereby waive the service upon us of citation in error, and do hereby accept service of such citation upon us, so that the effect shall be the same as though the citation in error, issued by the Hon. Edward R. Meek, presiding as Circuit Judge, were duly served upon us at the date of signing this waiver. The citation hereby waived is the one directing us to appear before the Supreme Court of the United States to show cause why the above styled cause pending on writ of error in said court from the Circuit Court of the United States for the Northern District of Texas at Fort Worth should not be reversed.

Witness our hands this 11th day of September A. D. 1905.

SAM J. HUNTER,
Attorney for Defendants in Error, R. C. Reagan, T. Smith, S. A. Greer, and C. F. Lee.

The foregoing has the following endorsement, to-wit:—
284 L. J. T. Smithers *vs.* R. C. Reagan *et al.* Acceptance of service of citation in error. Filed 11th day of Sept. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

82 *Acceptance of Service by A. M. Monteith, Geo. C. Pendleton, and W. E. Hall.*

Filed September 11th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

J. T. SMITHER, Plaintiff in Error,
vs.
R. C. REAGAN ET AL., Defendants in Error.

We, the undersigned, A. M. Monteith, Geo. C. Pendleton and W. E. Hall, do hereby waive the service of citation in error upon us and hereby accept service of said citation, so that the effect shall be the same as though the citation in error were duly served upon us as of the date of signing this waiver. The citation hereby waived is one directing us to appear before the Supreme Court of the United States to show cause why the above styled cause pending on writ of error in said court from the Circuit Court of the United States for the Northern District of Texas at Fort Worth should not be reversed.
Witness our hands this 11th day of Sept. 1905.

A. M. MONTEITH,
Attorney for Self and Others Above Named, Defendants in Error.

The foregoing has the following endorsement, to-wit:—
No. 284 L. J. T. Smithers *vs.* R. C. Reagan *et al.* Acceptance of service. Filed 11th day of Sept 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

83 *Acceptance of Service by James B. and Ella Daniels.*

Filed September 11th 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

J. T. SMITHERS, Plaintiff in Error,
vs.
R. C. REAGAN ET AL., Defedants in Error.

We, the undersigned, James B. Daniels and Ella Daniels, do hereby waive the service of citation in error upon us and hereby accept service of said citation, so that the effect shall be the same as though citation in error were duly served upon us as of the date of

signing this waiver. The citation hereby waived is the one directing us to appear before the Supreme Court of the United States to show cause why the above styled cause pending on writ of error in said court from the Circuit Court of the United States for the Northern District of Texas at Fort Worth should not be reversed.

Witness our hands this 11th day of September 1905.

WM. HARTLEY PUGH,
Attorney for Defendants in Error.

The foregoing has the following endorsement, to-wit:—

284 L. J. T. Smithers *vs.* R. C. Reagan *et al.* Acceptance of service. Filed 11th day of Sept. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

84 *Clerk's Certificate.*

I, J. H. Finks, Clerk of the Circuit Court of the United States, in the Fifth Circuit and Northern District of Texas, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, bill of exceptions, assignments of error, and all proceedings had in cause No. 284, wherein J. T. Smithers is plaintiff and R. C. Reagan *et al.* are defendants, except that the original writ of error and original citation in error are included therein, instead of copies thereof, as fully as the same remain on file and of record in my office at Fort Worth, Texas.

Witness my hand officially, and the seal of said Circuit Court of the United States for the Northern District of Texas, at Fort Worth, Texas, this the 30th day of September, and of American Independence the 129th year.

[The Seal of the U. S. Circuit Court, Northern Dist., Texas, Ft. Worth.]

J. H. FINKS,
Clerk of said Court,
By J. B. FINKS,
Deputy.

Endorsed on cover: File No. 19,943. N. Texas, C. C. U. S. Term No. 138. J. T. Smithers, plaintiff in error, *vs.* T. Smith, S. A. Greer, R. C. Reagan, *et al.* Filed October 24, 1905. File No. 19,943.